

Criminal Justice & Courts Bill (Part One)

House of Lords – Report Stage (Day One)

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The Criminal Justice and Courts Bill is the fourth Ministry of Justice-led criminal justice bill introduced by the Coalition Government. [Following a series of troubling HM Inspectorate of Prisons and Independent Monitoring Board reports and the Chief Inspector of Prisons Nick Hardwick's warning of a "political and policy failure" in prison policy](#), it is difficult to understand why the Government is introducing measures which will increase the size of the prison population, raise public costs and add significantly to the work of criminal justice agencies at a time when staff, resources and budgets are already overstretched. Many of the provisions involve significant transfers of powers to the Secretary of State, limiting the discretion of operational managers and reducing scope for effective Parliamentary scrutiny. Plans for a 300-place secure college, housing boys and girls aged 12-17, along with mandatory prison sentences for knife possession, could drive up the numbers of children in custody following a welcome period of decline both in youth imprisonment and youth crime.

This briefing focuses on key amendments to Part 1 of the Bill including:

- Clause 3: Parole Board resources (Amendment 1)
- Clause 7: Electronic monitoring (Amendments 6-8)
- New clause: Recall adjudicators (Amendments 9-38 and 44)
- Clause 10: Indeterminate sentences (Amendment 39)
- Clause 27: Knife possession (Amendments 60, 63, 67, 68, 72, 75, 79, 80, 84, 87, 91 and 92)

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The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, Government and officials towards reform. PRT provides the secretariat to the All Party Parliamentary Penal Affairs Group. www.prisonreformtrust.org.uk

Clause 3

Parole Board resources (Amendment 1)

Page 4, line 43, at end insert—

“(13) Before this section comes into force, the Secretary of State shall—

(a) consult the Parole Board about the resources required for additional hearings resulting from the implementation of this section; and

(b) lay a report before Parliament containing—

(i) his assessment of the resources required for additional hearings; and

(ii) his plans to ensure that the Parole Board has adequate resources to fulfil the requirements of this section effectively.”

Amendment 1 requires the Secretary of State to consult with the Parole Board on the resources needed to meet the provisions of Clause 3 and lay a report before Parliament with his assessment of the resources required and plans to ensure that the Parole Board has sufficient resources to meet the requirements of Clause 3.

Clause 3 adds a number of new offences to Schedule 15B of the Criminal Justice Act 2003, which relate to ‘dangerous offenders’. This change has the effect that an offender given an extended determinate sentence for one of these offences will not be eligible for automatic release once the two-thirds point of the appropriate custodial term has been reached, but instead will be referred by the Secretary of State to the Parole Board at that point.

In addition to Clause 3, the following provisions in the Bill have resource implications for the Parole Board:

- Clause 4 amends existing release arrangements for people serving an Extended Determinate Sentence (EDS), removing automatic release at the two-thirds point and requiring release to be directed by the Parole Board.
- Clause 5 and Schedule 1 introduce a new sentence for adults convicted of certain listed terrorism-related and sexual offences as well as existing Schedule 18A offences included in the Criminal Justice Act 2003. People convicted of these offences will be required to apply to the Parole Board in order to secure release from custody before the end of their sentence, rather than being automatically released at the halfway point, or made to serve the entirety of their sentence in custody with an additional 12 months of supervision on release.
- Clause 7 introduces a new statutory re-release test for recalled determinate sentence prisoners to be conducted by the Parole Board. It also introduces a new provision which would mean that more recalled determinate sentence prisoners would serve the remainder of their sentence in custody unless released by the Parole Board (a standard recall), rather than for a fixed period of 28 days with automatic release (a fixed term recall) as currently exists. This would be the case if it appears to the Secretary of State that the person is highly likely to breach a condition on their licence. **Amendments 9-38 and 44 transfer responsibility for the adjudication of recalled determinate sentenced prisoners to a newly created post – the “recall adjudicator” (see below).**

The Government has estimated in its Impact Assessment¹ that Clauses 1-5 and Schedule 1 will result in an increase of around 1,100 Parole Board hearings per year, in the long run, with the full impact reached by 2030.² With no increase in Parole Board hearings in this Spending Review period (ending March 2015), there would be an increase of less than 50 hearings per year in the next Spending Round period (ending March 2016), and an increase of around 400 hearings per year by March 2020.

The Government estimates that the proposals will result in an increase in the prison population of around 1,000 places, in the long run, with the full impact reached by 2030. It estimates that there would be no increase in the prison population in this Spending Review period (ending March 2015), there would be an increase of less than 10 prison places in the next Spending Round period (ending March 2016), and that there would be an increase of around 300 prison places by March 2020.

The Prison Reform Trust is concerned that the Government may have underestimated the potential impact of these provisions on the workload of the Parole Board. It is worth noting that the introduction of the Indeterminate Sentence for Public Protection (IPP) by the Criminal Justice Act 2003 saw a significant underestimate by the Ministry of Justice of the number of people likely to receive the sentence, and the Parole Board is still dealing with the consequences of this. When the legislation introducing the IPP sentence was debated in Parliament the Government estimated that the sentence would increase the prison population by 900 places. At the end of December 2013 there were 5,335 people serving an IPP sentence in prison with two-thirds (3,561 people) held beyond their tariff expiry date.³

During the Committee Stage of the Bill, Lord Beecham tabled amendments regarding the resource implications for the Parole Board of the new provisions. Responding for the Government, Lord Faulks gave the following assurances:

- Clause 3 should not give rise to more than negligible impacts, since very few offenders are convicted of the offences in question.
- Most of the increase in Parole Board workload will arise from the new determinate sentence created by Clause 5 and Schedule 1.
- People who receive the new sentence are likely to receive substantial prison sentences; meaning there will be a substantial time lag before these cases start to come through to the Board.⁴

Concerns were raised during the debate regarding the implications of the Osborn judgment which had resulted in an increase in demand for oral hearings. This has placed pressure on existing Parole Board resources and caused a growing backlog of cases. The latest edition of the Parole Board newsletter suggests that the Board will be holding around 9000 oral hearings per year from now on, as opposed to a previous average of 4,500.⁵ Initial estimates had put the increase from 4,500 to 16,000. Peers raised questions as to whether the Parole Board would be sufficiently resourced to meet the provisions of the Bill and the additional pressures placed on it by the Osborn judgment.

¹ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/277800/early-release-ja.pdf

² <https://www.gov.uk/Government/publications/criminal-justice-and-courts-bill-impact-assessments>

³ Table 1.4, Ministry of Justice (2013) Offender Management Statistics (Quarterly) July to September 2013, London: Ministry of Justice

⁴ Hansard HL, 14 July 2014, c382

⁵ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/349062/Boardsheet.Aug.14.pdf

Responding, Lord Faulks made the following points:

- The Parole Board has established a programme of work to equip itself for dealing with the challenge of providing an increased number of oral hearings.
- The Board has identified the scale of the increase in workload and the increased capacity needed. Until now, around 550 cases have been listed a month, which has been the Board's maximum capacity. Additional resources have been allocated to facilitate an increased capacity of nearer 750 cases.
- Determinate sentence parole review cases have been changed to single-member panels to bring them in line with other paper reviews. This has increased capacity from 105 per month to 142, without increasing resource.
- Pilots have been set up to trial a new approach to providing support to parole reviews and a new central assessment system. This includes a new approach to listing hearings. In July 2014, panels started to be composed of two rather than three members. The Board is recruiting additional case managers to increase the capacity for oral hearings.
- The Ministry of Justice has provided additional resources to the board to support this work; further funding, in the sum of £1.2 million, was provided in 2013-14. This enabled the Board to take measures, including the recruitment of additional staff, to support the increased provision of oral hearings. In addition, the Board's 2014-15 baseline funding has been increased from £10.8 million to £13.8 million.⁶

Peers may want to raise the following points in light of the Government's response:

- At a time of a significant increase in the Parole Board's workload, why is the Government introducing new provisions which will place further pressure on resources and result in additional expense to the taxpayer? There are already long determinate and indeterminate sentences available for the most serious offences. The extended determinate sentence has just been introduced under the provisions of the Legal Aid Sentencing and Punishment of Offender Act 2012. The Government is already seeking to change the sentence before a proper assessment of its impact has been made.
- What assessment has been made of the additional financial resources that will be required to meet the provisions of the Bill?
- Predictions as to the impact of new sentencing provisions have previously proved unreliable. What margin of error has the Government allowed for in its estimates?
- Initial estimates of the impact of the Osborn judgment suggested it would result in 16,000 oral hearings per year, as opposed to a previous average of 4,500.⁷ This estimate has been revised down to 9,000. What is the reason for this?
- What assessment has been made of the implications of the introduction of one member panels for determinate sentenced reviews and two member panels for indeterminate case reviews for human rights obligations?

⁶ Hansard HL, 14 July 2014, c382

⁷ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/349062/Boardsheet.Aug.14.pdf

Clause 7

Electronic monitoring (Amendments 6-8)

Amendment 6

Page 6, line 33, at end insert—

“(c) include provision for the court to decline to make an electronic monitoring condition in any case where the court considers that it would be unjust, unnecessary or impractical to do so.”

Amendment 6 makes provision for a court to decline to make an electronic monitoring condition in a case where it would be unjust, unnecessary or impractical to do so. Clause 6 transfers a significant amount of power to the Secretary of State, allowing changes to be made without affording sufficient Parliamentary scrutiny. Sub-clause 3(b) allows people to be required to have GPS electronic monitoring for the purposes of ‘a sampling basis’, meaning that even those outside of the Secretary of State’s defined groups may be subject to monitoring irrespective of the risk they pose, or the discretion of trained practitioners, but rather for research purposes.

Electronic monitoring can be an effective tool when used appropriately, particularly when coupled with good quality supervision. However, a blanket approach to monitoring certain groups of offenders, either by sentence length or offence type, is crude and fails to take the individual circumstances of the person, their risk, or the offence into consideration. Sub-clause (3) awards new powers to the Secretary of State which would inhibit practitioner discretion and limit Parliamentary scrutiny. Whilst there are some mechanisms to safeguard against inappropriate use, they are currently vague and rely on illustrative examples outlined the Bill’s explanatory notes.

It also allows the Secretary of State to make provision by reference to whether a person specified in the order is satisfied of a matter. For example, it might refer to cases in which the Secretary of State is satisfied that the offender has a physical or mental health problem which renders the offender unsuitable for the licence condition, or cases in which a person is satisfied that it is impossible to make arrangements for the offender to recharge the battery in the tag.⁸

During the Committee Stage debate on the Bill, the Government spokesperson Lord Ahmad sought to assure Peers that sufficient discretion was built into the new provisions:

I am aware that there are concerns that there may be offenders who are unsuitable for compulsory electronic monitoring, as my noble friend said. This may be because of physical or mental health issues, or there may be a practical problem such as not being able to make arrangements for the offender to recharge the battery in the tag. The clause also covers these circumstances as it specifies that the Secretary of State may provide for cases in which the compulsory condition should not apply.⁹

However, this fails to take account of the possibility that there might factors relating to the circumstances of the individual case which would make it inappropriate for compulsory electronic monitoring to be imposed that the Secretary of State may not have foreseen. The court, acting on the advice of the probation service and the information supplied in the pre-

⁸ <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0169/en/14169en.pdf>

⁹ Hansard HL, 14 July 2014, c402

sentence report, is best-placed to determinate the appropriate sentence based on the facts and circumstances of the individual case. This amendment would introduce an important safeguard to enable a court to decline to make an electronic monitoring condition when it is considered inappropriate.

Amendment 7

Page 7, line 13, at end insert—

“(1A) The code of practice must include a requirement that a person carrying out electronic monitoring who is not a public authority, as defined by section 3 of the Freedom of Information Act 2000 (public authorities), shall provide information in respect of the carrying out of electronic monitoring in the same manner as if they were such a public authority.”

Amendment 8

Page 7, line 19, at end insert—

“(6) A code of practice under this section must be made by statutory instrument.

(7) A statutory instrument containing a code of practice under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Amendment 8 makes provision for Parliamentary oversight of the code of practice on data gathering for offenders subject to electronic monitoring. Amendments 7 also seeks to strengthen oversight and scrutiny of the Government’s proposals for electronic monitoring by making a provider of electronic monitoring subject to the same provisions under the Freedom of Information Act 2000 as a public authority.

In its legislative scrutiny of the Bill, the Joint Committee on Human Rights noted the “seriousness of the interference with the right to respect for private life involved in compulsory electronic monitoring”.¹⁰ The Committee concluded that “detailed safeguards in the Code of Practice will be crucial to ensuring that the processing of data gathered from electronic monitoring following release on licence is carried out in such a way that any interference with the right to respect for private life is necessary and proportionate to the legitimate aims pursued. It is therefore important that there is some opportunity for Parliamentary scrutiny of the adequacy of those safeguards. We recommend that the Bill be amended to make the Code subject to some form of parliamentary procedure in order to ensure that Parliament has such an opportunity.”¹¹

During the Committee Stage debate on the Bill, the Government spokesperson Lord Ahmad rejected the advice of the Joint Committee and the need for the code to be made subject to Parliamentary process:

The code of practice is intended to make sure that the necessary safeguards are in place for the proper management of this information. This will, therefore, be an important document. However, it is primarily for operational purposes and, as such, is not intended to introduce

¹⁰ Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill - Human Rights Joint Committee

¹¹ Ibid.

*any new legal requirements. That is why we do not propose to agree its content through parliamentary procedure. It will, of course, comply with the Data Protection Act 1998, but we have committed to consultation on the document, and I assure all noble Lords that that will include consulting the Information Commissioner. The code of practice will also be published.*¹²

We encourage Peers to support amendments 6, 7 and 8

Recall adjudicators

Amendments 9-38 and 44

Amendment 9 introduces powers for the Secretary of State to

- appoint a “recall adjudicator” and “chief recall adjudicator” and
- confer functions on these posts in connection with the release of fixed-term prisoners following their recall.

Currently it is the responsibility of the Parole Board to decide whether determinate sentenced prisoners referred by the Secretary of State following recall to prison for breach of their licence conditions are safe to release into the community. The new clause would enable the Secretary of State to appoint either the Parole Board or “another person” – as yet unspecified – to perform this function.

Amendment 44 introduces further provisions for recall adjudicators.

Amendments 10 to 38 amend the new test for release after recall for determinate sentenced prisoners to enable the test to be adjudicated by recall adjudicators.

Summary

We understand that an intention of the amendments is to ease the existing pressures on the Parole Board to enable it to concentrate on its growing backlog of indeterminate sentence cases. The Supreme Court judgment in the case of *Whiston* has been relied on by Government to suggest that the creation of a recall adjudicator would not be incompatible with human rights obligations.¹³ However, we note that it is JUSTICE’s view that “the case does not provide a full proof justification for the new position, as compared with the independent and suitably qualified Parole Board.”¹⁴

The Prison Reform Trust raised concerns about the existing pressures on the Parole Board during the committee stage of the Bill.¹⁵ While we appreciate the intention of the proposals to ease these pressures, we are concerned that they are being rushed through without any opportunity for proper consultation or effective Parliamentary scrutiny. There has been no formal process of consultation on the proposals despite their representing a significant change to the scope and function of the Parole Board. There are no details in the proposals as to who the recall adjudicator will be, the exact nature and scope of their function or how they will cooperate with other criminal justice agencies to ensure a just, transparent and effective system of recall. Parliament is being asked to sign off on these proposals without any provision for oversight of their implementation. The lack of proper scrutiny means that, if

¹² Hansard HL, 14 July 2014, c402

¹³ R (on the application of Whiston) v Secretary of State for Justice [2014] UKSC 39 http://supremecourt.uk/decided-cases/docs/UKSC_2012_0279_Judgment.pdf

¹⁴ Justice note on the application of Whiston to proposed new recall adjudicators

¹⁵ Hansard HL, 14 July 2014, c379

implemented, the proposals could be subject to human rights challenges or judicial review at a later stage.

The Parole Board has recently completed stage 1 of its Triennial Review which considered the necessary functions of the Board. Stage 2 has just started and is considering governance. The Triennial Review would have been a better process for considering the proposed changes to the administration of recall instead of introducing them at the late stages of a Government bill without any prior consultation.

Amendments 10 to 38 makes provision for recall adjudicators to handle all cases of recall involving determinate sentenced prisoners. This includes offenders serving extended determinate sentences for particularly serious offences. Unlike ordinary determinate sentenced prisoners, the release of extended determinate prisoners is determined by the Parole Board. They must serve a minimum of two thirds of their sentence in custody and are also subject to a lengthy period under supervision on licence compared to ordinary determinate sentenced prisoners. For these reasons, we would argue that this group of offenders in particular are best left under the supervision of an experienced and independent Parole Board rather than an untried and untested new body.

Background

- In the 12 months ending March 2014, 17,515 people were recalled to custody, an increase of 7% on the previous year.¹⁶
- There were 5,260 recalled prisoners in prison on 30 June 2014, an increase of 3% compared to the previous year.¹⁷
- Recalled prisoners currently make up 6% of the prison population.¹⁸
- The recall population grew rapidly between 1993 and 2012, accounting for 13% of the overall increase in the prison population. This reflected a higher recall rate caused by changes to the law making it easier to recall prisoners, and changes introduced in the Criminal Justice Act 2003 which lengthened the licence period for most offenders.¹⁹

A fair and transparent process of recall and review is vital to ensure people are not unjustly deprived of their liberty when they are recalled to custody. The majority of those recalled to prison have not committed new crimes, instead they have breached the detailed requirements of their licence. Licence conditions must be abided by, and enforced if the probation system is to work and to hold public confidence. Once the offender is returned to prison, they should have access to a dossier detailing the reasons for their recall. People on standard recall have their case reviewed by the Parole Board. Although the process is designed to minimise risk to the public, putting someone into prison, even for a few days, can be hugely disruptive. Re-entry to prison endangers living arrangements, any employment and the pattern of contact with friends and family.

There is scope to improve the process of recall and review for recalled prisoners. The Prison Reform Trust's advice and information service responds to over 6,000 prisoners and their

¹⁶ Table 5.1, Ministry of Justice (2014) Offender Management Statistics quarterly, January to March 2014, London: Ministry of Justice and Offender Management Statistics quarterly, January to March 2013

¹⁷ Table 1.1, Ministry of Justice (2014) Offender Management Statistics quarterly January to March 2014, London: Ministry of Justice

¹⁸ Table 1.1, Ministry of Justice (2014) Offender Management Statistics quarterly, January to March 2014, London: Ministry of Justice

¹⁹ Ministry of Justice (2013) Story of the prison population: 1993-2012 England and Wales, London: Ministry of Justice

families each year. Increasingly concerns are being raised about recalls to custody. The most pressing issues we have identified are: delays in receiving written reasons for a recall; difficulty accessing information about the appeal process/paperwork to submit an appeal; delays prior to oral hearing being scheduled and obtaining paperwork for the hearing and increasing delays in hearings being scheduled.

However, the motivation for these proposals appears to be driven more by resource implications rather than a desire to improve the recall process. With the opportunity afforded by the Whiston judgment, the Government has introduced these provisions in order to limit the impact on the Parole Board of the Osborn judgment and the subsequent increase in demand for oral hearings by recalled determinate sentenced prisoners. According to the latest edition of the Parole Board's newsletter, the Board has seen "an increase in determinate recall cases being referred to an oral hearing, moving from an average of 3% (32 cases each month) to 14% in December, resulting in an additional 90 cases being referred for oral hearing in December."²⁰

Notwithstanding the underlying motivation for the changes, it is unclear whether the changes will solve the existing resource pressures created by the Osborn judgment instead of simply shifting the problem elsewhere. The Government's justification for the creation of a separate recall adjudicator depends on an interpretation of the Whiston judgment which so far has been untested in the courts. Even if the interpretation is upheld, and determinate recalled prisoners are not entitled to provision of an independent, court-like body, such as the Parole Board, for review, it is unclear why the Government needs to create a separate body when the Parole Board cost of a paper hearing is £60.

The recall and review of prisoners is a multi-agency process and requires effective liaison and cooperation between different agencies including the Parole Board, the probation service, the police, the prison service and the public protection casework section at the National Offender Management Service. It is concerning that these proposals are being introduced at a time of considerable change and upheaval in the justice system. These include the rushed introduction of community rehabilitation companies and the creation of a national probation service under *Transforming Rehabilitation*; a punishing benchmarking process and changes to prison staff terms and conditions under *Fair and Sustainable*; cuts to the police and court services and changes to the governance and structure of the Parole Board.

We understand that no final decision has been made on which body will perform the function of "recall adjudicator". However, according to a report in the Times newspaper on Saturday 21 June, the Government plans to transfer responsibility for administering recall cases from the Parole Board to magistrates.²¹ Responding to the report in the Times during the House of Lords Committee stage debate, Lord Faulks said:

*I was asked by the noble Lords, Lord Beecham and Lord Ponsonby, about the possibility of magistrates taking on some of the Parole Board work. Indeed, there was a story on that in the Times. The Government are considering a number of options to address the impact of the Supreme Court judgment, and no decision has yet been made. The Parole Board does an excellent job in protecting the public but we want to make sure that it continues to do so in the light of these increased pressures.*²²

It is unclear whether magistrates would have sufficient knowledge or resources to meet the demands of managing recall, an area for which up to now they have had no responsibility or

²⁰ Parole Board (2014) The Board Sheet, Issue 48 March 2014

²¹ Ford, R (2014) The Times, 21 June 2014

²² Hansard HL, 14 July 2014, c384

oversight. Making a decision on somebody's risk is entirely different to a decision about someone's innocence and guilt. If these arrangements are under consideration, they would engage magistrates in serious and complex cases that at an earlier stage in the criminal justice process would have been referred to a higher court.

The proposals are particularly concerning given the likely increase in the recall population as a result of the provision of this Bill and previous Government legislation. The current Impact Assessment of the Bill suggests that the changes to the recall test introduced by clause 8 will have a minimal impact on the Parole Board and the size of the recall prisoner population, but expectations seem unrealistically low.²³ It estimates that the policy will have an impact on an additional 75 offenders per year and require up to an additional 50 prison places at a cost of around £1.5m per annum. Peers will want to seek clarification from the Government on the calculation of these figures and that the Parole Board and / or recall adjudicators will be sufficiently resourced to meet the demands placed upon it by these provisions.

In particular, the Prison Reform Trust is concerned that the Government has failed properly to take into account the increased numbers of offenders who will be potentially subject to this new provision as a result of the changes introduced by the Offender Rehabilitation Act 2014. This Bill will introduce 12 month mandatory statutory supervision for short sentenced prisoners. The updated impact assessment of the Offender Rehabilitation Bill estimates that the changes will lead to around 13,000 offenders being recalled or committed to custody per year, resulting in a prison place increase of around 600 places.²⁴

The overarching impact assessment of the Criminal Justice and Courts Bill assumes "no impact" from the Offender Rehabilitation Bill,²⁵ despite the fact that short sentenced prisoners recalled on licence would seem to be included in the new arrangements. However, the detailed impact assessment of Clause 8 acknowledges that "There is a risk that the introduction of licence conditions for offenders receiving less than 12 month sentences (provisions contained in the Offender Rehabilitation Bill) might increase the overall impact of this policy."²⁶ The potential impact is not quantified in the impact assessment.

We encourage Peers to reject these amendments.

Clause 10

Indeterminate sentences (Amendment 39)

Page 11, line 2, after "(prisoners)" insert—

"(a) after subsection (2) insert—

"(2A) Without prejudice to the powers of the Secretary of State to change the release test under this section, the Parole Board shall direct the release on licence of prisoners serving indeterminate sentences with a tariff of less than 2 years imposed before 2008 when the Criminal Justice Act 2003 was amended."

²³ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/287974/overarching-ia.pdf

²⁴ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf

²⁵ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/287974/overarching-ia.pdf

²⁶ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/277805/parole-board-ia.pdf

Amendment 39 addresses the unjust detention of nearly 1,000 people serving an IPP sentence with a tariff of less than two years. At the end of June 2014 there were 5,119 people serving an IPP. Most had a tariff length of four years or less and 927 people had a tariff of less than two years.²⁷

When the IPP sentence was originally introduced in 2005, it could be imposed on people who had committed an offence that would have previously attracted a relatively short determinate sentence. As a result far more were passed by the courts than the original few hundred predicted, placing huge pressure on an already overstretched prison service and Parole Board. In 2008 reforms were introduced to limit the scope of the IPP, but the sentence continued to be passed by the courts at a considerable rate. Meanwhile, a failure properly to plan and resource the sentence had left thousands of people languishing in jail. This included the people sentenced prior to the 2008 reforms with tariffs of less than two years, who would not have received an IPP sentence under the post-2008 changes.

Following near universal criticism of the sentence from judges, Parole Board members, HM Inspectorate of Prisons, the Prison Governors' Association, staff and prisoners and families alike, the IPP was eventually abolished in 2012 by the Legal Aid, Sentencing and Punishment of Offenders Act.

However, this still leaves the problem of existing IPP prisoners who, because of a lack of available places on scarce offending behaviour programmes, which are overly relied upon to demonstrate reduced risk, are unable to work towards their legitimate release. IPP prisoners are also faced with significant delays in obtaining an oral hearing from the Parole Board due to a growing backlog of cases. As of April 2014 the total backlog of Parole Board cases to be reviewed stood at 2,022 – 57 fewer than its peak in July 2010 but a 53% increase on the previous year. In April 2013 the former justice minister Lord McNally acknowledged that, at the current rate of release, the backlog of IPP prisoner cases would take around nine years to clear.

It is shaming to have so many people locked up indefinitely who would have received a determinate sentence under current sentencing provisions. The situation is particularly unfair to those people who were sentenced before 2008 to an IPP sentence with an original tariff of less than two years. The Prison Reform Trust has been in contact with a person who received an IPP with a 71 day tariff and is now in his fifth year of imprisonment. As Professor Mike Hough and Dr Jessica Jacobson highlighted in a 2010 report for the Prison Reform Trust:

“It strikes us as fundamentally unfair to have two groups of prisoners with identical criminal histories, one group sentenced prior to July 2008, subject to indeterminate preventative sentences, and the other sentenced thereafter, and serving relatively short determinate sentences. The former group will watch the latter leave prison whilst they remain subject to indeterminate preventative detention—detention that was imposed in relation to offences which, by any measure, were of relatively low levels of seriousness.”²⁸

Lord Lloyd tabled an amendment in the Committee Stage debate to direct the release on licence of prisoners serving indeterminate sentences with a tariff of less than 2 years imposed before 2008. Responding on behalf of the Government, Lord Faulks said:

Our position remains that it would not be right or appropriate retrospectively to alter sentences that had been lawfully imposed prior to the abolition of IPPs, particularly because

²⁷ Table 1.9, Ministry of Justice (2014) Offender Management Statistics Quarterly Bulletin October to December 2013, London: Ministry of Justice

²⁸ House, M & Jacobson, J (2010) Unjust deserts, London: Prison Reform Trust

*in this case those sentences were imposed with public protection issues in mind. Consequently, prisoners serving IPP sentences are not released unless the Parole Board authorises it.*²⁹

Responding to concerns regarding the resources available to the Parole Board to handle the growing backlog of indeterminate sentence cases, Lord Faulks said that “the Government were well aware of the demands, temporary and in future, being presented to them [the Parole Board]. They had given further resources and were intending to be nimble in responding to the demands that were and would be placed upon them.”³⁰

We encourage Peers to support amendment 39

Clause 27

Knife possession

Amendments 60, 63, 67, 68, 72, 75, 79, 80, 84, 87, 91 and 92 exclude people aged under 18 from the provisions of Clause 27. Clause 27 would impose a mandatory jail sentence for a second conviction of carrying an offensive weapon or having an article with a blade or point in a public place or on school premises. In the case of a person who is aged at least 16 but under 18 when convicted, the Clause would impose a detention and training order (DTO) of at least 4 months.

In the case of a person who is aged 16 or 17 on the date the offence was committed but is aged 18 or over when convicted, the Clause would impose a sentence of imprisonment for a term of at least six months. The Clause would impose a sentence of imprisonment for a term of at least six months on people aged 18 or over on the date the offence was committed. We note other amendments seek to introduce additional safeguards in exercising requirements under this Clause.

Clause 27 will lead to the inappropriate imprisonment of children and young people. Knife crime is a serious problem in some inner-city communities but the term covers a wide-range of offences from those involving threat or injury to the much less serious offence of possession. The majority of children and young people who carry knives do so out of fear and for protection; not to threaten or injure others.³¹

Currently rates of child and adult convictions for knife possession are falling along with levels of youth crime and the numbers of children in custody. For the period April to June 2014, 3,842 disposals were given for possession of a knife or offensive weapon offence, two per cent lower than the previous quarter and four per cent lower than in Q2 2013. Over time the number of disposals for juvenile offenders cautioned or convicted for possession offences has decreased at a faster rate to disposals for adult offenders – where the number of cautions or convictions given for these offences to juvenile offenders is now 60 per cent lower than the peak seen in Q3 2008, compared to 43 per cent lower for adult offenders.³²

Courts already have sufficient powers to deal appropriately with repeat offenders and the existing framework is working to deter children and adults from committing further knife possession offences. The new Clause is likely to lead to children and young people being

²⁹ Hansard HL, 14 July 2014, c420

³⁰ Ibid.

³¹ Stephen Roe and Jane Ashe, *Young People and Crime: findings from the 2006 Offending, Crime and Justice Survey*, Home Office Statistical Bulletin (Home Office, July 2008), p.14

³² Ministry of Justice (2014) *Knife Possession Sentencing Quarterly Brief April to June 2014 England and Wales*

exposed to more serious offenders in prison. They are also likely to disproportionately affect black and ethnic minorities who are already overrepresented in the child and adult prison population. The Home Affairs Select Committee is currently conducting an inquiry into gangs and youth crime.³³ Its remit includes “the effectiveness of current law enforcement and legislation, including gang injunctions, knife and gun crime legislation”. It would be premature of Parliament to legislate in this area without the opportunity to take into the account the findings and recommendations of the Committee.

We encourage Peers to support amendments 60, 63, 67, 68, 72, 75, 79, 80, 84, 87, 91 and 92

³³ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/140327-new-inquiry-gangs/>