



Police, Crime, Sentencing and Courts Bill House of Lords Report Stage on 13 December 2021

Sentence of Imprisonment for Public Protection (IPP)

Joint briefing on amendments 79, 80 and 81

1. The IPP sentence has been described by the former Supreme Court Justice Lord Brown as “the greatest single stain on our criminal justice system”.¹ Enacted in 2005 under the provisions of the Criminal Justice Act 2003, the IPP was effectively a life sentence in all but name. Soon after its introduction, problems with the sentence began to emerge. In practice, the IPP was often given to people convicted of low-level offences. The criminal justice system was ill-equipped to deal with the large number of people receiving IPPs. The criteria for the IPP were tightened in 2008, and the sentence was abolished in 2012 by the Legal Aid, Sentencing and Punishment of Offenders Act. However, people sentenced to an IPP continue to face the same release requirements, remain on licence indefinitely, and are subject to indefinite recall.
2. One recalled IPP prisoner interviewed for a recent PRT research report despaired of having “no life, no freedom, no future” under the IPP. Describing in graphic detail the impact of the IPP and the cycle of release and recall on his own mental health and wellbeing, the prisoner said: “So long as I’m under IPP I have no life, no freedom, no future. I fear IPP will force me to commit suicide. I have lost all trust and hope in this justice system...Each day I feel more and more fear and dismay and I am starting to dislike life...I have to suffer in prison in silence. Accept it or suicide. That’s my only options left.”²
3. A total of 8,711 IPP sentences were issued. On 30 June 2021 there were still 1,722 people in prison serving an IPP.³ Almost all (96%) people still in prison serving an IPP sentence have passed their tariff expiry date—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence. 269 people are still in prison despite being given a tariff of less than two years—most of these (207 people) are still in prison over a decade after their original tariff expired.⁴ Over the past several years the prison service and Parole Board have increased cooperation and efficiency in the consideration of IPP cases, introduced reforms to improve readiness for release and release planning and

¹ Grierson, J. (2020, December 3). Indefinite sentences ‘the greatest single stain on justice system’. *The Guardian*. <https://www.theguardian.com/law/2020/dec/03/indefinite-sentences-the-greatest-single-stain-on-justice-system>

² Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf

³ Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>

⁴ Table 1.9b, *ibid*.

made improvements to the assessment of risk.⁵ These changes contributed to a welcome increase in the number of IPP prisoners being released. From 30 September 2015 to 30 June 2021 the number of never-released IPP prisoners has fallen by 61% from 4,431 to 1,722.⁶ In more recent years, however, the number of first releases has declined. In 2018, 506 people serving an IPP sentence were released from prison for the first time—by 2020 this number had fallen to 275.⁷

4. Furthermore, there remains a significant problem of IPP recalls. In June 2021 there were 1,332 people back in prison having previously been released—more than double the number of five years ago.⁸ A government answer to a written question tabled by the shadow justice minister Lyn Brown MP reveals that the government expects the number of recalls to massively outstrip releases—3,400 recalls compared to 800 releases in the next 5 years.⁹ Recalled IPP prisoners who were re-released during 2020 had spent on average a further 20 months in prison before re-release.¹⁰ Recent research by the Prison Reform Trust has raised concerns regarding the arrangements for the support of IPP prisoners in the community after release.¹¹ It found that support on offer did not match the depth of the challenge they faced in rebuilding their lives outside prison. Risk management plans drawn up before release all too often turned out to be unrealistic or inadequately supported after release, leading to recall sometimes within a few weeks of leaving prison, and for some people on multiple occasions. The process of recall also generated strong perceptions of unfairness.
5. Peers tabled a number of amendments on IPPs to the Police Crime Sentencing and Courts Bill for debate at committee stage on 15 November 2021.¹² There was cross-party support in the debate for the amendments and the minister Lord Wolfson acknowledge the strength of feeling in the House on the issue. However, he did not accept the amendments as tabled, and Lord Blunkett promised to return to the matter in the report stage of the bill. Peers have tabled three amendments relating to IPPs for the report stage, which are due to be debated on Monday 13 December. Two of the three amendments are versions of amendments which were tabled in committee. **We encourage Peers to support the following amendments at report and also to vote for them if they proceed to a vote.**

⁵ Jones, M. (2016). *Written advice to Nick Hardwick on the IPP*. Prison Reform Trust. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/MJ%20IPP%20paper%20July%202016.pdf>

⁶ Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>; and Offender management statistics quarterly: April to June 2016.

⁷ Table A3.3. Ministry of Justice. (2021). *Offender management statistics quarterly: October to December 2020*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2020>

⁸ Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>; and Offender management statistics quarterly: April to June 2016.

⁹ House of Commons. (2021). *Written question UIN 81905*. <https://questions-statements.parliament.uk/written-questions/detail/2021-11-25/81905>

¹⁰ Table 5.11. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>

¹¹ Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf

¹² *Police, Crime, Sentencing and Courts Bill committee stage (8th day)*. (2021, November 15). UK Parliament. <https://hansard.parliament.uk/lords/2021-11-15/debates/1EBF855A-81C2-4A9F-9A64-C923D4F90E93/PoliceCrimeSentencingAndCourtsBill>

Amendment 79

6. Amendment 79 requires the Secretary of State to establish an independent commission to consider proposals for reform of the IPP sentence within three months of the passing of the Act. The remit of the commission must include, but is not limited to, the consideration of proposals that (a) would allow for existing IPP sentences to be terminated and for their replacement by arrangements appropriate to the circumstances of the individuals concerned; and (b) have regard to the interests of both public protection and meeting but not exceeding the original punitive intention of the sentence imposed. Proposals for reform of the IPP are already in the public domain, including those put forward in advice prepared by the Parole Board in 2016 for the former Justice Secretary Michael Gove.¹³ These included proposals to convert all or the majority of IPP sentences; to establish a ‘sunset’ provision for all or some sentences; and to change the Parole Board release test. All of these proposals have merits and potential drawbacks. What is needed now is the input of an expert commission to assess these proposals in detail and put forward its own recommendations for reform. We envisage that the commission should be judge-led, in order to consider and propose legal solutions to the problems associated with the sentence. Its work would therefore compliment that of the cross-party Justice Committee’s inquiry into the IPP sentence,¹⁴ and we expect the committee’s work to be a substantive stream of evidence into the commission.

Amendment 80

7. A version of amendment 80 was tabled at committee stage. It would require a direction of release at a person’s next Parole hearing if they have served the maximum available determinate sentence for their index offence or are ten years past their tariff expiry (whichever is sooner) unless the detaining authority can prove they pose an ongoing risk. This amendment would go some way to restoring proportionality to IPP sentences where the individual has been held long past the expiry of their original tariff and/or held longer than the maximum determinate sentence for their index offence. In doing so, it would help to restore some sense of hope to people serving an IPP sentence who have never been released from prison, and their families. We understand concerns about balancing public protection against increased certainty of release. This amendment retains that balance by placing the burden of proof on the detaining authority rather than the person applying for parole. However, we are concerned that, in practice, this may do little to remove the difficulties that IPP prisoners experience in getting parole. If this amendment passes, we would like to see it accompanied by independent scrutiny of the detaining authority’s practices in assessing the risks posed by IPP prisoners, in order to evaluate whether transferring the burden of proof results in any meaningful changes.

Amendment 81

8. A version of amendment 81 was tabled at committee stage. It makes two modest but important changes to the way in IPP licence reviews are conducted by the Parole Board for IPP prisoners on release in the community.
9. First, the amendment brings into statute a commitment already made by the former justice secretary Robert Buckland to make the process of applying for an IPP licence review after the expiry of the qualifying period an “automatic process, rather than the onus being on

¹³ Jones, M. (2016). *Written advice to Nick Hardwick on the IPP*. Prison Reform Trust. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/MJ%20IPP%20paper%20July%202016.pdf>

¹⁴ House of Commons Justice Committee. (2021, September 21). *Justice Committee launches inquiry into IPP sentences*. UK Parliament. <https://committees.parliament.uk/committee/102/justice-committee/news/157647/justice-committee-launches-inquiry-into-ipp-sentences/>

offenders to apply.”¹⁵ This solves a technical difficulty with automating the process under the existing legislation by placing a clear duty on the secretary of state to refer a case to the Parole Board after the expiry of the qualifying period and annually thereafter.

10. Second, the amendment reduces the qualifying period from 10 to five years after which an individual on an IPP licence would be eligible to be referred to the Parole Board to have their licence reviewed. The current qualifying period of 10 years is disproportionate and excessive, particularly for those IPP prisoners given a short minimum custodial term. Five years is a more proportionate and practical period and evidence suggests would present minimal risk in terms of recall¹⁶ and no risk in terms of serious further offences.¹⁷ The decision whether or not to terminate the licence would remain with the Parole Board based on an assessment of risk. This represents a modest reform to a situation which a remarkable coalition of peers on all sides of the house have criticised in the strongest terms. The evidence brought to support it shows that it carries no discernible risk to public protection and its first element merely facilitates the government’s existing policy intention. It offers a glimmer of hope to those people who have succeeded against odds that research has shown to be stacked against them.

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¹⁵ House of Lords. (2021). *Written question UIN HL1795*. <https://questions-statements.parliament.uk/written-questions/detail/2021-07-07/HL1795/>

¹⁶ Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf#page=21

¹⁷ Ministry of Justice. (2021, August 5). *Freedom of Information request 210721007*. Prison Reform Trust. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/FOI%20210721007%20IPP%20SFOs.pdf>

Amendment 79

After Clause 116

LORD BLUNKETT
BARONESS BURT OF SOLIHULL
LORD HUNT OF KINGS HEATH

Insert the following new Clause—

“Independent commission to consider proposals for reform of the IPP sentence

- (1) Within three months of the passing of this Act, the Secretary of State must establish an independent commission to consider proposals for reform of the imprisonment for public protection (“IPP”) sentence.
- (2) The remit of the commission must include, but is not limited to, the consideration of proposals that—
 - (a) would allow for existing IPP sentences to be terminated and for their replacement by arrangements appropriate to the circumstances of the individuals concerned; and
 - (b) have regard to the interests of both public protection and meeting but not exceeding the original punitive intention of the sentence imposed.”

Amendment 80

LORD BROWN OF EATON-UNDER-HEYWOOD LORD JUDGE
LORD BEITH
LORD BLUNKETT

Insert the following new Clause—

“Limit on sentences of IPP

Once a prisoner serving a sentence of imprisonment for public protection has served a period of detention—

- (a) in excess of the maximum determinate sentence provided by law for the offence or offences for which they were convicted, or
- (b) 10 years or more beyond the tariff term of their sentence,

the Secretary of State must by order pursuant to section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 direct that, following the prisoner’s referral to the Parole Board, they will be released unless the Board is satisfied by the detaining authority that it remains necessary and proportionate for the protection of the public from serious harm that they should continue to be confined.”

Amendment 81

LORD MOYLAN
LORD GARNIER
LORD BLUNKETT

Insert the following new Clause—

“Amendments to the Crime (Sentences) Act 1997: parole

- (1) Section 31A of the Crime (Sentences) Act 1997 is amended as follows.
- (2) For subsections (3) and (4) substitute—
 - “(3) Where the prisoner has been released on licence under this Chapter—
 - (a) upon the expiry of the qualifying period, or
 - (b) within the period of 12 months beginning with the day on which the Parole Board has dismissed a previous referral under this subsection in relation to the prisoner, the Secretary of State shall refer the prisoner’s case to the Parole Board for consideration under subsection (4).
 - (4) Where a referral is made under subsection (3), the Parole Board—
 - (a) must, if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force, direct the Secretary of State to make an order that the licence is to cease to have effect;
 - (b) must otherwise dismiss the referral.”
- (3) After subsection (4) insert—
 - “(4A) When considering a referral under subsection (3), the Board must consider any previous referral and any information that—
 - (a) the Secretary of State, or
 - (b) the prisoner,wishes to place before the Board.”
- (4) In subsection (5), for “ten” substitute “five”.