



## **Victims and Prisoners Bill**

### **Release test for Imprisonment for Public Protection (IPP) cases**

### **Briefing for Peers – Committee of the Whole House**

#### **About Us**

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

#### **Summary**

The Bar Council supports the amendment tabled by Lord Moylan (supported by the Lord Blunkett, Baroness Chakrabarti and Lord Hope of Craighead) to include a new Clause after Clause 48 of the Victims and Prisoners Bill which would alter the release test for certain prisoners serving a sentence of detention or imprisonment for public protection.

#### **Amendment**

LORD MOYLAN  
LORD BLUNKETT  
BARONESS CHAKRABARTI  
LORD HOPE OF CRAIGHEAD

After Clause 48, insert the following new Clause—

#### **“Imprisonment of detention or imprisonment for public protection: release test**

(1) This section applies to a prisoner serving a sentence of imprisonment or detention for public protection who has served a period of imprisonment or 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 minimum term of their sentence.

(2) In the case of a prisoner to whom this section applies—

- (a) the Secretary of State must by order pursuant to section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (power to change test for release on licence of certain prisoners) 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.
- (b) section 28ZA of the Crime (Sentences) Act 2017 (public protection decisions) does not apply.”

#### ***Member's explanatory statement***

*This amendment would alter the release test applied by the Parole Board for certain prisoners serving a sentence of detention or imprisonment for public protection under the existing powers of section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.*

## Background – sentences of imprisonment for public protection

The introduction of a provision on the termination of licenses for prisoners serving sentences of imprisonment for public protection (IPP) in the Victims and Prisoners Bill is welcome and a modest step forward. However, it does not address the position of those who have not been released and does not, therefore, fully address the ‘stain on the justice system’ that IPPs present.

Lord Moylan’s proposal provides for a different approach to assessing eligibility for release. In essence, it places the burden on the state to demonstrate continuing risk, rather than placing the burden on the individual to prove the converse.

The power of the Secretary of State to amend the release test by statutory instrument is provided for by s.128 of LASPO 2012. This power was identified by Lord Thomas of Cwmgiedd, then Lord Chief Justice, in the Court of Appeal decision of *R. v. Roberts & others* [2016] EWCA Crim 71, as one of three possible means to rectify any historic injustices arising from the implementation of sentences of IPP: *“It will not be easy to find a ready solution, for simply to release those who have completed their tariff periods would have the consequence that many would be put into the community without any supervision and they might well pose a risk of danger. It would appear that there is no likely solution other than (1) significant resources be provided to enable those detained to meet the current test for release which the Parole Board must apply or (2) for Parliament to use the power contained in s.128 of LASPO 2012 to alter the test for release which the Parole Board must apply or (3) for those in custody to be re-sentenced on defined principles specially enacted by Parliament.”* [46]

The principal advantages of Lord Moylan’s proposal, as against the re-sentencing all of those affected by IPP sentences, seem to us to be the following:

- (i) A modification of the release test would not require the re-hearing by the already over-burdened Crown Court of well over a thousand sentences;
- (ii) The proposal targets now the sentences that are most likely to be disproportionate to the underlying offending, i.e. those where the offender is well over-tariff, or where they have served longer than the maximum determinate sentence that could have been imposed for the offence committed;
- (iii) The Parole Board would retain its role, as the specialist tribunal, in determining risk on release;
- (iv) Where the need for continued detention can be demonstrated by the state on grounds of the risk of serious harm, release can be denied.

## Conclusion

It has been acknowledged across the legal and political spectrum that the enduring impact of sentences of IPP are a stain on the justice system. This amendment represents an elegant, legally sound and appropriately risk-based solution for the most egregious injustices produced by the imposition of such sentences, while preserving the ability to deny release in cases in which public protection requires it.

**The Bar Council**  
**January 2024**