



Police, Crime, Sentencing and Courts Bill House of Lords Committee Stage on 1 November 2021

Sentence of Imprisonment for Public Protection (IPP)

Joint briefing on amendments 208A, 208B, 208C, 208D, 208E

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. A total of 8,711 IPP sentences were issued. On 30 June 2021 there were still 1,722 people in prison serving an IPP.² 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.³ 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 made improvements to the assessment of risk.⁴ 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 1,722.⁵ 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 275.⁶

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 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>

³ Table 1.9b, Ibid.

⁴ 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>

⁵ 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*.

⁶ 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>

3. 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.⁷ Recalled IPP prisoners who were re-released during 2020 had spent on average a further 20 months in prison before re-release.⁸ Recent research by the Prison Reform Trust has raised concerns regarding the arrangements for the support of IPP prisoners in the community after release.⁹ 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.
4. Peers have tabled a number of amendments on IPPs to the Police Crime Sentencing and Courts Bill for debate at committee stage on 1 November 2021. We encourage Peers to support the following amendments:
5. Probing amendments **208A** and **208C** require the government to conduct a review of the arrangements for the resettlement and supervision of prisoners serving sentences of IPP. 208A requires a review of the effectiveness of these arrangements, including an assessment of the factors underlying the rates of breach and recall of prisoners serving sentences of IPP released on licence, and what could be done to address them. 208C requires a review of the resources and support available for the resettlement and supervision of prisoners serving sentences of IPP released on licence, including the adequacy of resettlement provision and the training and resources available to the National Probation Service.
6. Probing amendments **208B** and **208E** require the government to conduct a review of the arrangements for the sentence progression and support of prisoners serving sentences of imprisonment for public protection within six months of passing the Act. Amendment 208B requires a review of the effectiveness of the provision for sentence progression, as well as the support available for mental health and those who have been recalled. It also requires an assessment of measures which could be taken to improve sentence progression and rate of release. Amendment 208E requires a review of the opportunities available for sentencing progression, including whether there are sufficient places on offending behaviour programmes, in prisons with progression regimes, and the availability of other opportunities to enable IPP prisoners to demonstrate reduced risk.
7. Amendment **208D** 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. 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 offenders to apply.”¹⁰ 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. 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

⁷ 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.

⁸ 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>

⁹ 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

¹⁰ House of Lords. (2021). *Written question UIN HL1795*. <https://questions-statements.parliament.uk/written-questions/detail/2021-07-07/HL1795/>

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 recall¹¹ and no risk in terms of serious further offences.¹² The decision whether or not to terminate the licence would remain with the Parole Board based on an assessment of risk.

Contact

Mark Day, Head of Policy and Communications, Prison Reform Trust,
mark.day@prisonreformtrust.org.uk
07725 526 525

Jonathan Bild, Director of Operations, Sentencing Academy,
j.bild@sentencingacademy.org.uk

Laura Janes, Legal Director, Howard League for Penal Reform,
Laura.Janes@howardleague.org
07817 962 206

Tyrone Steele, Criminal Justice Lawyer, JUSTICE
tsteele@justice.org.uk

UNGRIPP
ungripp.com

INQUEST
inquest@inquest.org.uk

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#page=21

¹² 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 208A

LORD BLUNKETT
LORD FALCONER OF THOROTON

After Clause 115

Insert the following new Clause—

“Review of the arrangements for the resettlement and supervision of prisoners serving sentences of IPP: effectiveness

- (1) Within six months of the passing of this Act, the Secretary of State must lay a report before both Houses of Parliament on the effectiveness of the arrangements for the resettlement and supervision of prisoners serving sentences of imprisonment for public protection (“IPP”) released on licence.
- (2) The report must include, but not be limited to—
 - (a) an assessment of the factors underlying the rates of breach and recall of prisoners serving sentences of IPP released on licence, and what could be done to address them, including—
 - (i) the effectiveness of the arrangements for the preparation of prisoners serving sentences of IPP to be released on licence, including the adequacy of information and guidance for prisoners on licence provisions, breach of licence and the risk of recall;
 - (ii) the adequacy of existing probation service guidance on breach and recall;
 - (iii) whether more use could be made of alternatives to immediate recall to custody including electronic tagging;
 - (iv) the extent to which a failure to properly support and supervise prisoners serving sentences of IPP on release is contributing to the high proportion of this group breaching the terms of their licence and being recalled to prison.”

Amendment 208C

LORD HUNT OF KINGS HEATH

Insert the following new Clause—

“Review of the arrangements for the resettlement and supervision of prisoners serving sentences of IPP: support and resources

(1) Within six months of the passing of this Act, the Secretary of State must lay a report before both Houses of Parliament on the effectiveness of the arrangements for the resettlement and supervision of prisoners serving sentences of imprisonment for public protection (“IPP”) released on licence, with particular reference to available support and resources.

(2) The report must include, but not be limited to—

(a) an assessment of the adequacy of the resettlement support available to prisoners serving sentences of IPP released on licence for—

- (i) housing;
- (ii) welfare;
- (iii) employment;
- (iv) physical and mental health;

(b) an assessment of the adequacy of the training and resources available to the National Probation Service for the resettlement and supervision of prisoners serving sentences of IPP released on licence.”

Amendment 208B

BARONESS BURT OF SOLIHULL

Insert the following new Clause—

“Review of the arrangements for the sentence progression and support of prisoners serving sentences of imprisonment for public protection: effectiveness and support

- (1) Within six months of the passing of this Act, the Secretary of State must lay a report before both Houses of Parliament on the effectiveness of the arrangements for the sentence progression and support of prisoners serving sentences of imprisonment for public protection (“IPP”), with particular reference to the effectiveness of support.
- (2) The report must include, but not be limited to—
 - (a) an assessment of the effectiveness of the provision and support available to prisoners serving sentences of IPP to enable them to progress in their sentences, including—
 - (i) offending behaviour programmes;
 - (ii) progression regimes; and
 - (iii) other aspects of the prison regime which enable prisoners serving sentences of IPP to progress and demonstrate reduced risk;
 - (b) an assessment of the welfare and mental health support available to prisoners serving sentences of IPP, including measures to reduce the risk of self-harm and self-inflicted death;
 - (c) an assessment of the provision and support available to prisoners serving sentences of IPP who have been recalled to prison to enable them to progress;
 - (d) an assessment of measures which could be taken to improve the sentence progression and rate of release of prisoners serving sentences of IPP, including—
 - (i) improvements in the efficiency and effectiveness of the parole system;
 - (ii) improvements in coordination and cooperation between the Parole Board and HMPPS;
 - (iii) altering the Parole Board release test under section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and
 - (iv) improvements in the availability and effectiveness of support in the community to enable IPP prisoners to be safely released.”

Amendment 208E

LORD GARNIER
LORD BLUNKETT

Insert the following new Clause—

“Review of the arrangements for the sentence progression and support of prisoners serving sentences of imprisonment for public protection: opportunities

- (1) Within six months of the passing of this Act, the Secretary of State must lay a report before both Houses of Parliament on the effectiveness of the arrangements for the sentence progression and support of prisoners serving sentences of imprisonment for public protection (“IPP”), with particular reference to opportunities for prisoners.
- (2) The report must include, but not be limited to—
 - (a) an assessment of the availability of the provision and support available to prisoners serving sentences of IPP to enable them to progress in their sentences, including—
 - (i) whether there are sufficient places available for prisoners serving sentences of IPP on offending behaviour programmes;
 - (ii) whether prisoners serving sentences of IPP are able to complete offending behaviour programmes in appropriate time to aid progression milestones such as parole or recategorisation;
 - (iii) whether there are sufficient places available for prisoners serving sentences of IPP in prisons providing progression regimes; and
 - (iv) the availability of other opportunities for prisoners serving sentences of IPP to enable them to progress and demonstrate reduced risk, particular for those who have completed opportunities afforded to them by offending behaviour programmes and progression regimes.”

Amendment 208D

LORD MOYLAN
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) Upon—

(a) the prisoner’s release on licence under this Chapter, and (b) the expiry of the qualifying period,

the Secretary of State must 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 must— (a) 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) otherwise dismiss the application.”

(3) After subsection (4) insert—

“(4A) Where a referral made under subsection (3) has been dismissed by the Parole Board, the Secretary of State must refer the prisoner’s case to the Board no later than 12 months from the dismissal of—

(a) a referral under subsection (3); (b) a referral under this subsection.

(4B) Where a referral is made under subsection (4A), 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.

(4C) When considering a referral under subsection (4A), the Board must consider the original application 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”.