



## BRIEFING PAPER

Number 06086, 9 December 2016

# Sentences of Imprisonment for Public Protection

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## Summary

### What are IPPs?

Sentences of Imprisonment for Public Protection (IPPs) were introduced by the last Labour Government from 2005. They were designed to ensure that dangerous violent and sexual offenders stayed in custody for as long as they presented a risk to society. Under the system, a person who had committed a specified violent or sexual offence would be given an IPP if the offence was not so serious as to merit a life sentence. Once they had served their "tariff" they would have to satisfy the Parole Board that they no longer posed a risk before they could be released.

### What's the problem?

The main concerns about IPPs are that:

- Some less serious offenders were given very short tariffs but then have been kept in prison for a long time after these have expired
- The prison and parole systems could not cope with the need to give all these short-tariff prisoners appropriate access to rehabilitative and resettlement programmes so that they could demonstrate they were no longer a risk to society
- The administrative delays resulted in uncertainty and perceived injustice for prisoners and litigation
- The rapid increase in the numbers of those on IPPs contributed to prison overcrowding, which in turn exacerbated the problems with providing rehabilitation

### IPPs were abolished in 2012, but not for existing prisoners

The Coalition Government abolished sentences of imprisonment for public protection (IPPs) for offenders convicted on or after 3 December 2012, calling the system "not defensible". It replaced them with different sentences for dangerous offenders. However the change was not made retrospective. It didn't apply to existing prisoners serving those sentences at the time. At the end of June 2016 there were still around 4,000 prisoners serving IPPs.

In April 2016, the then Justice Secretary Michael Gove said that whilst he had "no current plans" to change the statutory test for releasing IPP prisoners, there were initiatives to help them make progress towards release. He asked the chairman of the Parole Board to develop "an improved approach" to IPP prisoners.

### Pressure for change

Former Justice Secretaries Ken Clarke and Michael Gove himself have called for reforms. The Chairman of the Parole Board set out in November 2016 how the Board can reduce the numbers of IPP prisoners but also suggested possible ways that the Government could take action if it wanted further reductions. This could be done by revising the risk test (either for all IPP prisoners or for those with short tariffs) or releasing IPP prisoners who have now served longer than the maximum current sentence for their offence.

In a recent thematic review, Her Majesty's Chief Inspector of Prisons, Peter Clarke, said it was "widely accepted that implementation of the sentence was flawed" and that "decisive action" was needed for reasons of cost, "fairness and justice" and to relieve pressures on the system. Recent Government statements point to "encouraging" progress" with reducing the numbers serving IPPs but point out the need to balance this progress with the potential dangers such prisoners can pose.

# 1. Introduction

Sentences of Imprisonment for Public Protection<sup>1</sup> were introduced by the Labour Government through the *Criminal Justice Act 2003* for offences committed on or after 4 April 2005. They were abolished by the previous Government, in that they have not been available to those convicted on or after 3 December 2012. However, this was not retrospective, and existing prisoners remained on this sentence.

IPPs were introduced in April 2005.

IPPs are indeterminate sentences, as opposed to fixed-term or determinate sentences. They were designed to detain people in prison who pose a significant risk of causing serious harm to the public through further serious offences until they no longer pose such a risk. They could be given to an offender who had committed one or more of a large number of specified violent or sexual offences where the seriousness of the offence did not merit a life sentence. Like a life sentence, the IPP has a “tariff” or punitive element. Once that is served, the prisoner will have his or her case reviewed by the Parole Board. The prisoner would only be released once the Board was satisfied that he or she was no longer dangerous. Release is never automatic and prisoners can be detained indefinitely if the Parole Board decides it is not safe to release them.

Prisoners on IPPs have to serve a “tariff”. After this, they have to satisfy the Parole Board that they are no longer dangerous.

The *Criminal Justice Act 2003* followed a review of sentencing commissioned by the previous Government. The resulting Halliday Report<sup>2</sup> proposed that dangerous offenders who did not receive a life sentence would be eligible for a new determinate prison sentence. The Government’s 2002 White Paper, *Justice for All*, went further than this, proposing to “introduce a new sentence to ensure that dangerous violent and sexual offenders stay in custody for as long as they present a risk to society”:

The offender would be required to serve a minimum term and would then remain in prison beyond this time, until the Parole Board was completely satisfied that the risk had sufficiently diminished for that person to be released and supervised in the community. The offender could remain on licence for the rest of their life.<sup>3</sup>

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<sup>1</sup> Sometimes called Indeterminate Sentences for Public Protection or Indeterminate Public Protection Sentences

<sup>2</sup> [Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales](#), July 2001

<sup>3</sup> Criminal Justice Service, [Justice for All](#), Cm 5563, July 2002, p95

## 2. Criticisms of the sentence

### Summary

A number of inter-related problems have been identified with IPPs. The main ones are:

- The provision as introduced was too broad, and caught up less serious offenders as well as the more serious ones
- Because there were so many prisoners on IPPs with short tariffs, all needing to show that they were no longer a risk to society before they could be released, this put a strain on the prison and parole systems, which had been used to dealing with indeterminate sentence prisoners with much longer tariffs
- The administrative delays resulted in uncertainty and perceived injustice for prisoners and litigation
- The rapid rise in the numbers of those on IPPs has contributed to overcrowding

A thematic review of IPPs published by Her Majesty's Chief Inspector of Prisons in October 2008 said that the "inevitable consequence" of the provisions "was an explosion in the number of those receiving the new sentence":

This large number of new, and resource-intensive, prisoners was fed into a system that was already under strain. By autumn 2005, when such sentences began to be passed, the prison population was surging, and has continued to do so. There are now nearly 8,000 more prisoners in the system than the average for 2005. This has not only increased pressure, and reduced manoeuvrability, within the prison system; it has also meant that a great deal of officials' time and energy has been taken up with simply finding enough prison spaces. Similarly, the Probation Service was increasingly under strain as a result of increased workloads.

(...)

It led to IPP prisoners languishing in local prisons for months and years, unable to access the interventions they would need before the expiry of their often short tariffs. A belated decision to move them to training prisons, without any additional resources and sometimes to one which did not offer relevant programmes, merely transferred the problem. By December 2007, when there were 3,700 IPP prisoners, it was estimated that 13% were over tariff. As a consequence, the Court of Appeal found that the Secretary of State had acted unlawfully, and that there had been 'a systemic failure to put in place the resources necessary to implement the scheme of rehabilitation necessary to enable the relevant provisions of the 2003 Act to function as intended'. Rather more pithily, a prison lifer governor told us: 'It is as though the government went out and did its shopping without first buying a fridge'.<sup>4</sup>

Prisoners on IPPs can experience problems accessing the right rehabilitation courses.

<sup>4</sup> Her Majesty's Chief Inspector of Prisons, [The Indeterminate Sentence for Public Protection](#), September 2008

The Justice Committee in its 2008 report *Towards Effective Sentencing* said that IPPs put “an enormous strain on the prison system and the Parole Board”:

50. There are two main criticisms of Imprisonment for Public Protection sentencing— firstly that the structure of the sentences is flawed and secondly that the systems surrounding their implementation and operation were not given enough thought or resources.<sup>5</sup>

A joint report by prison and probation inspectorates published in March 2010 drew attention to the low number of IPP prisoners released. This described the position as “unsustainable” and called for a ministerial review.<sup>6</sup>

## 2.1 Driving up the prison population?

The following table and chart show the growth in IPPs since 2006 (and the more recent reduction in numbers), and the effect on the overall population of those with indeterminate sentences:

**Population of Indeterminate sentenced prisoners by type of sentence and sex at 30 June:**

	2006	2007	2008	2009	2009 <sup>(1)(2)</sup>	2010 <sup>(2)</sup>	2011 <sup>(2)</sup>	2012 <sup>(2)</sup>	2013 <sup>(2)</sup>	2014 <sup>(2)</sup>	2015 <sup>(2)</sup>	2016 <sup>(2)</sup>
<b>Males and females</b>	<b>7,274</b>	<b>9,481</b>	<b>11,382</b>	<b>12,521</b>	<b>12,182</b>	<b>13,134</b>	<b>13,644</b>	<b>13,754</b>	<b>13,182</b>	<b>12,587</b>	<b>12,053</b>	<b>11,359</b>
Mandatory lifers	4,103	4,317	4,581	4,920	4,757	4,665	4,911	5,095	5,163	5,228	5,288	5,309
IPP	1,079	2,859	4,461	5,205	5,240	5,659	6,056	6,080	5,617	5,118	4,614	3,998
Others <sup>(3)</sup>	2,092	2,305	2,341	2,396	2,185	2,810	2,677	2,579	2,402	2,241	2,151	2,052
<b>Males</b>	<b>7,047</b>	<b>9,182</b>	<b>11,035</b>	<b>12,147</b>	<b>11,813</b>	<b>12,753</b>	<b>13,267</b>	<b>13,360</b>	<b>12,779</b>	<b>12,205</b>	<b>11,691</b>	<b>10,992</b>
Mandatory lifers	3,949	4,143	4,395	4,717	4,548	4,459	4,704	4,867	4,909	4,971	5,027	5,038
IPP	1,045	2,776	4,333	5,074	5,109	5,525	5,924	5,949	5,497	5,023	4,538	3,928
Others <sup>(3)</sup>	2,053	2,262	2,307	2,356	2,156	2,769	2,639	2,544	2,373	2,211	2,126	2,026
<b>Females</b>	<b>227</b>	<b>299</b>	<b>347</b>	<b>374</b>	<b>369</b>	<b>381</b>	<b>377</b>	<b>394</b>	<b>403</b>	<b>382</b>	<b>362</b>	<b>367</b>
Mandatory lifers	154	173	185	203	209	206	207	228	254	257	261	271
IPP	34	83	128	131	131	134	132	131	120	95	76	70
Others <sup>(3)</sup>	39	43	34	40	29	41	38	35	29	30	25	26

(1) Due to the introduction of a new prison IT system the 2010 prison population data is now taken from a different source. The 2009 figures from both the old and new systems have been presented to aid comparison.

(2) Figures exclude recallees

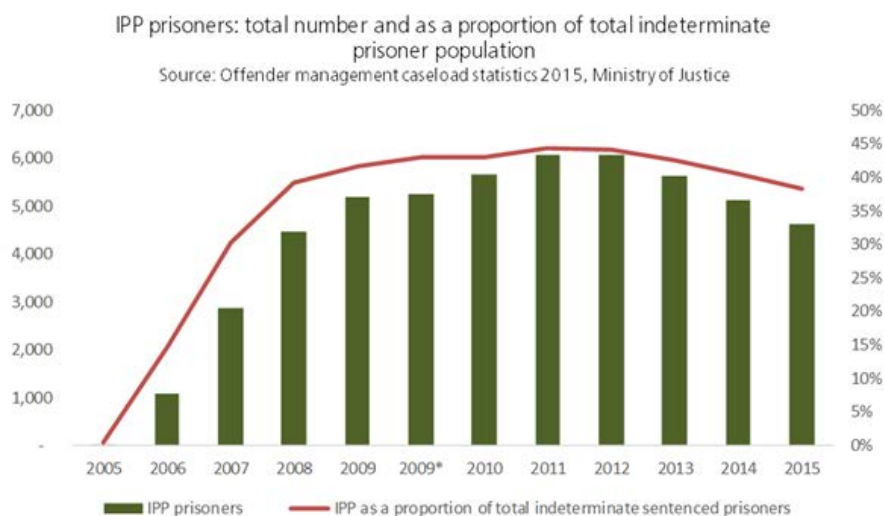
(3) Other category includes discretionary and automatic life sentences

Source: MoJ, *Annual prison population: 2016*, table A1.15, 27 October 2016

<sup>5</sup> Justice Committee, *Towards Effective Sentencing*, 22 July 2008, HC 184 2007-08

<sup>6</sup> CJI *Indeterminate Sentences for Public Protection: A Joint Inspection by HMI Probation and HMI Prisons* March 2010: Foreword

## 7 Sentences of Imprisonment for Public Protection



\* Due to the introduction of a new prison IT system from 2010 the 2009 figures from both the old and new systems have been presented to aid comparison.

The number of prisoners serving indeterminate sentences (IPP or life) was down 6% on the previous year to 11,359. This decrease is explained entirely by a decrease in the male IPP population. As a result of the abolition of the IPP sentence, offenders are no longer receiving these sentences and prisoners are only being released from this population. Since the IPP sentenced was abolished, the IPP population has fallen by just over a third from 6,020 as at the end of September 2012 to 3,998 as at the end June 2016. The number of IPP prisoners who are post-tariff has fallen by 2% over the last year. The proportion of the IPP population post-tariff has been increasing. For the first time more than 82% of IPP prisoners are now post-tariff.<sup>7</sup>

The number of prisoners serving IPPs reached a high of around 6,000 in 2012 but has since fallen to around 4,000.

A total of 18,562 offenders were released from custody in the quarter ending June 2016, a similar number to the same quarter last year. In contrast there has been a rise of 1% in the number of prisoners released from indeterminate sentences, when compared to the same quarter last year. Between April and June 2016, 129 prisoners were released from an IPP sentence and a further 88 were released from a life sentence.<sup>8</sup>

### 2.2 Were IPPs directed at the right offenders?

As originally drafted, there was no minimum requirement for the length of the tariff. As a result, many prisoners were given a relatively short tariff but ended up in prison for lengthy periods following the expiry of

<sup>7</sup> Ministry of Justice, [Offender management statistics quarterly: January to March 2016: Annual prison population: 2016](#), 27 October 2016

<sup>8</sup> Ministry of Justice, [Offender management statistics quarterly: April to June 2016](#), 27 October 2016, page 11

their tariffs. In one case, the courts imposed an IPP sentence where the tariff was only 28 days.<sup>9</sup> This led to criticisms that IPP sentences were being imposed in respect of offences at the less serious end of the spectrum, creating management problems in the prison system due to the large numbers of prisoners serving indeterminate sentences following expiry of their tariffs. There were also criticisms that judges' discretion was being undesirably restricted. The Justice Committee report described the evidence it had received on this point, concluding:

61. The removal of judicial discretion in relation to the imposition of Imprisonment for Public Protection sentences for certain second-time offenders was a retrograde step.

62. The substantial number of Imprisonment for Public Protection sentences with short tariffs demonstrate that this type of sentence has not been targeted at those offenders who positively pose a grave risk to the public for fear of committing serious violent or sexual offences, but has been imposed on a much larger group of offenders whose offending behaviour does not merit a disposal as draconian as an Imprisonment for Public Protection sentence. It is difficult to understand why an offender who might only receive a short determinate sentence should be given an Imprisonment for Public Protection sentence for having a previous conviction for a comparatively minor offence and be considered as 'dangerous' and thus merit an indefinite custodial sentence.<sup>10</sup>

## 2.3 Pressures on the prison and parole systems

Before they can be released, prisoners serving indefinite sentences have to demonstrate that they have addressed their offending behaviour and are no longer a risk to society. The parole system, which assesses the risks posed by offenders, historically has been used for those with longer sentences. One of the problems identified by critics of IPPs is that it is difficult for prisons – particularly overcrowded ones - to help prisoners with short tariffs to take the necessary steps to demonstrate that they are no longer a risk. There have been a number of court cases arising from difficulties over the availability of offender behaviour courses for prisoners serving IPPs and consequent delays over obtaining parole.<sup>11</sup> The Justice Committee described the evidence it had taken on this:

52. Most of our witnesses were strongly opposed to Imprisonment for Public Protection sentences with short tariffs, as these would not allow for rehabilitative and resettlement programmes and interventions properly to take place inside prison so that prisoners could address their risk factors in time for their assessment for release on licence by the Parole Board. (...)<sup>12</sup>

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<sup>9</sup> [HC Deb 11 December 2007 c155](#)

<sup>10</sup> Justice Committee, [Towards Effective Sentencing](#), 22 July 2008, HC 184 2007-08

<sup>11</sup> See for example *Secretary of State for Justice v Walker* [2008] EWCA Civ 30

<sup>12</sup> Justice Committee, [Towards Effective Sentencing](#), 22 July 2008, HC 184 2007-08



## 2.4 The effects on prisoners

Many reports have highlighted negative effects of IPP sentences on the mental health and wellbeing of those sentenced to them. A 2007 report by the Prison Reform Trust described confusion and possible negative consequences for prisoners' mental health.<sup>13</sup> In 2008, the Sainsbury Centre for Mental Health published a report which highlighted negative impact of serving an IPP on prisoners' mental health.<sup>14</sup> In July 2010, the Prison Reform Trust and Institute for Criminal Policy Research at King's College London published a joint review of IPPs. Their report pointed to the logistical problems for the prison and probation services and Parole Board caused by the number of prisoners then in custody serving IPPs. The effects on prisoners could also, the report argued, be profound.<sup>15</sup>

In 2013, the Howard League for Penal Reform reported that:<sup>16</sup>

IPP prisoners experienced high levels of anxiety, and several noted that IPP prisoners were at increased risk of self-harm. This was particularly the case for those pre-2008 sentenced prisoners serving short tariffs who would not have been eligible for the sentence following the changes made in the Criminal Justice and Immigration Act 2008. It was emphasised that this cohort of prisoners had particular difficulties with anxiety as they saw others who had been convicted of similar crimes after 2008 enter and leave prison while they were detained substantially beyond their tariff date.

In its summer 2016 Bromley Briefing Prison Factfile, the Prison Reform Trust noted that IPP prisoners had one of the highest rates of self-harm in prison.<sup>17</sup>

Her Majesty's Inspectorate of Prisons published a thematic report on IPPs in November 2016 (see section 6.7 below) which noted that IPP prisoners were significantly more likely than either lifers or prisoners with fixed term sentences to have arrived in prison feeling depressed and suicidal, and to have other problems:<sup>18</sup>

According to our surveys, both male and female IPP prisoners were significantly more likely than life or determinate sentence prisoners to have arrived in their current prison with problems, including feeling depressed and suicidal. They were more likely than other groups to say that they had emotional wellbeing and mental health problems and to say they had a drug and/or alcohol problem on arrival at their current prison.

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<sup>13</sup> Prison Reform Trust, [Indefinitely Maybe? How the indeterminate sentence for public protection is unjust and unsustainable](#), July 2007

<sup>14</sup> Sainsbury Centre for Mental Health, [In the dark: The mental health implications of Imprisonment for Public Protection](#), 2008

<sup>15</sup> Jessica Jacobson and Mike Hough [Unjust deserts: imprisonment for public protection](#) Prison Reform Trust & Institute for Criminal Policy Research July 2010: page 6-7

<sup>16</sup> Howard League for Penal Reform, [The Never Ending Story: Indeterminate sentencing and the prison regime](#), 2013

<sup>17</sup> Prison Reform Trust, [Prison: The facts](#), Summer 2016, page 3

<sup>18</sup> HM Inspectorate of Prisons, [Finding a way forward for prisoners serving sentences of imprisonment for public protection](#), November 2016

### 3. Changes to the scheme under the Labour Government

#### Summary

Labour conducted a review IPPs in 2007, resulting in administrative changes. It also changed the law to introduce a new “seriousness threshold” to improve the way courts targeted the sentence.

In July 2007, the then Justice Secretary, Jack Straw, said that he was undertaking an urgent review of the operation of IPPs. The resulting “Lockyer Review” recommended improvements to the management of IPPs, including that IPP prisoners should be “moved quickly to establishments that can offer appropriate assessment and intervention”.<sup>19</sup>

#### 3.1 A new “seriousness threshold” from July 2008

In response to criticisms about IPPs being poorly targeted, in 2008 the Labour Government introduced a new “seriousness threshold” that would have to be satisfied before the court could impose an IPP sentence.<sup>20</sup> As a result, an IPP sentence could only be imposed:

- **either** where the offender had previously been convicted of an offence listed in Schedule 15A of the 2003 Act before committing the latest offence,
- **or** the notional minimum term (i.e. the term the prisoner would have served had he received a determinate sentence) would have been at least two years.<sup>21</sup>

The Act also amended the wording of section 225 of the Criminal Justice Act 2003, to state that a court ‘may’ impose an IPP if the stipulated conditions were met, in contrast to the original legislation which used the word ‘must’. It also amended section 229 of the 2003 Act, to remove the presumption of dangerousness

The Ministry of Justice noted in July 2011 that the changes had slowed the increase in the numbers of those serving indeterminate sentences.<sup>22</sup>

The change wasn’t retrospective. Some, including the Prison Reform Trust, criticised the non-retrospective nature of the 2008 changes for creating unfairness:

Labour introduced a new “seriousness threshold” in 2008 which slowed the increase in the numbers of those serving indeterminate sentences.

<sup>19</sup> Lockyer review, Ministry of Justice, [Service review – Indeterminate Sentence Prisoners \(SNPs\)](#), 17 August 2007

<sup>20</sup> Through the *Criminal Justice and Immigration Act 2008*

<sup>21</sup> For debate in the Lords, see [HL Deb 26 February 2008 c615](#)

<sup>22</sup> Ministry of Justice, [Offender Management Statistics Quarterly Bulletin January to March 2011, England and Wales](#), 28 July 2011

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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.<sup>23</sup>

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<sup>23</sup> Prison Reform Trust, [Unjust Deserts: imprisonment for public protection](#), July 2010, pp49-50

## 4. Abolition of IPPs by the Coalition Government

### Summary

The Coalition Government responded to what it called the “very serious problem” of IPP prisoners by abolishing the sentence in the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*. Courts can now impose “mandatory” life sentences for second serious offences and new extended sentences.

However, these changes do not affect the position of existing prisoners serving IPP sentences.

### 4.1 The 2010 Green Paper

In June 2010, the then prisons minister Crispin Blunt said that the system was “not defensible”:

We inherit a very serious problem with IPP prisoners. We have 6,000 IPP prisoners, well over 2,500 of whom have exceeded their tariff point. Many cannot get on courses because our prisons are wholly overcrowded and unable to address offending behaviour. That is not a defensible position.<sup>24</sup>

Following its review of sentencing, in December 2010 the Ministry of Justice published a green paper.<sup>25</sup> One of the paper’s proposals was to restrict IPP sentences to those offenders who would otherwise have merited a determinate sentence of at least ten years (i.e. at least five years in prison and the remainder on licence).<sup>26</sup> On 21 June 2011, the day the *Legal Aid, Sentencing and Punishment of Offenders Bill* was published, the Prime Minister David Cameron gave a press conference on sentencing reform, including the following comments on IPPs:

The consultation also raised significant concerns about the effectiveness of indeterminate sentences – so-called ‘IPPs’ – introduced by the last government. We have inherited a system that is unclear, inconsistent and uncertain. Unclear because actually a large proportion of the public don’t really know what indeterminate sentences are or how they work. Inconsistent because they can mean that two people who commit the same crime can end up getting very different punishments. And uncertain because victims and their families don’t have any certainty about the sentence that will be served or when their assailants will be let out. So we’re going to review the existing system urgently with a view to replacing it with an alternative that is clear, tough and better understood by the public.<sup>27</sup>

<sup>24</sup> HC Deb 15 June 2010 c730

<sup>25</sup> Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), Cm 7972, December 2010

<sup>26</sup> Ibid, pp55-6

<sup>27</sup> No 10 Downing Street, [The PM’s press conference on sentencing reforms](#), 21 June 2011

## 4.2 Legal challenge

In 2012, in the case of [James, Wells and Lee v UK](#), three prisoners who were subject to IPP sentences brought a case to the European Court of Human Rights. The court held that the failure to make appropriate provision for rehabilitation services while the men were in prison breached their rights under Article 5 of the Convention, which protects the individual from arbitrary detention. The lack of provision meant that the applicants could not show that they were rehabilitated and therefore suitable for release, as was required under the scheme. This and other legal challenges increased the pressure for a change in the law.

## 4.3 The change to the law

At report stage of the *Legal Aid, Sentencing and Punishment of Offenders Bill*, Kenneth Clarke, then Secretary of State for Justice, introduced the new clauses and schedules relating to the abolition of IPP sentences. Mr Clarke said that the Government was “replacing a regime that did not work as it was intended to with one that gives the public the fullest possible protection from serious, violent and sexual crime.”<sup>28</sup> He explained why the Government believed IPPs to be unjust:

What is wrong is that indeterminate sentences are unfair between prisoner and prisoner. The Parole Board has been given the task of trying to see whether a prisoner could prove that he is no longer a risk to the public. It is almost impossible for the prisoner to prove that, so it is something of a lottery and hardly any are released. We therefore face an impossible problem.<sup>29</sup>

The first new clause relating to IPPs was added to the Bill following a division, the subsequent new clauses and schedules were added without division.

## 4.4 The new sentences for dangerous offenders

The [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (LASPO) received Royal Assent on 1 May 2012. The changes to sentences for dangerous offenders are in [Chapter 5](#) of Part 3, sections 122 to 128, and in [schedule 18](#), with transitional provisions in [schedule 19](#). Chapter 5 repeals provisions in the 2003 Act creating indeterminate sentences for public protection and extended sentences and replaces them with provisions for life sentences to be imposed on conviction for a second serious offence and new provision for extended sentences. The relevant sections came into force on 3 December 2012, but are only available to those convicted on or after that date.<sup>30</sup> They introduce:

- New “mandatory” life sentences for second serious offences

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 abolished IPPs for those convicted after 2 December 2012.

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<sup>28</sup> [HC Deb 1 Nov 2011 c785](#)

<sup>29</sup> [HC Deb 1 Nov 2011 c787](#)

<sup>30</sup> [Article 6 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Commencement No. 4 and Saving Provisions\) Order 2012, SI 2012/2906](#)

- New extended sentences.

## 5. Existing prisoners

### Summary

When it changed the law, the previous Government decided not to alter IPP sentences retrospectively. This was because courts imposing them would have done so “with risk management issues in mind.”

There has been a series of recent calls for change, including from former Justice Secretaries and Her Majesty’s Chief Inspector of Prisons.

In recent statements, the Government has pointed to “encouraging” progress” with reducing the numbers serving IPPs but point out the need to balance this progress with the potential dangers such prisoners can pose

### 5.1 Why didn’t the previous Government abolish IPPs retrospectively?

Because the changes were not retrospective, there was some pressure during the *Legal Aid, Sentencing and Punishment of Offenders Bill’s* committee stage in the House of Lords address the position of existing prisoners.

Lord McNally gave the previous Government’s response:

We do not think that it is right or appropriate retrospectively to alter sentences that were lawfully imposed by the court simply because a policy decision has now been taken to repeal that sentence. That is what would be required to make release automatic for those prisoners. Generally, sentences already imposed are not substantively altered by subsequent legislation. In this case, it would be particularly difficult, as the court would have to impose the sentence with risk management issues in mind.<sup>31</sup>

### 5.2 Pressure for further change

#### The Osborn Judgement

In October 2013, the Supreme Court gave judgement in the case of Osborn, Booth and Reilly which had wide implications for the Parole Board.<sup>32</sup> Put simply, this meant that the Parole Board had to hold oral hearings in a huge number of cases which had previously been dealt with on paper. These included:

- any case in which there is a relevant factual dispute between the prisoner and the Secretary of State or a witness called on his behalf
- cases in which there is no such dispute but a very long time has elapsed since the prisoner’s punishment period has expired

<sup>31</sup> [HL Deb 9 Feb 2012 c443](#)

<sup>32</sup> [Osborn et al v Parole Board \[2013\] UKSC 61](#)

The fact that an immediate order for release is unrealistic could no longer be a bar to the holding of such a hearing.<sup>33</sup>

The Government gave additional resources to the Parole Board for the year 2014/15, but the effects of the judgement damaged progress with reducing backlogs.<sup>34</sup>

## National Audit Office

In December 2013 the National Audit Office published a report which commented on the continuing problem of access to accredited courses for prisoners serving various types of indeterminate sentences.<sup>35</sup>

## Former ministers' interventions

On 12 April 2016, an oral question on foreign national prisoners serving IPPs prompted the former Labour Home Secretary Lord Blunkett to contribute to the debate:

My Lords, it is probably not the moment for me to confess that I was the Home Secretary who introduced the idea. The original intention, which I hope is understood, was that only those who posed a really serious risk to the population would be subject to such orders. That did not come about, and I regret that very strongly. But is it not a fact that what is lacking are the courses and therapy to allow the Parole Board to make the necessary decisions as quickly as possible, so that the overly prolonged incarceration of many of these prisoners can come to an end?

For the Government, Lord Faulks replied:

I entirely accept that the intention was to protect the public and that this provision caught in the net rather more prisoners than it was expected to catch. It must be remembered, of course, that these courses are important because they can provide evidence that a prisoner has grappled with a particular problem, whether it is sex offending, violence, drugs or whatever it might be. It is not a prerequisite for their release that they have to have attended these courses, although it may provide some evidence. Equally, the fact that you attend a course does not guarantee your release. We have increased the availability of courses to these prisoners.<sup>36</sup>

On 30 May 2016, Ken Clarke told Radio 4's *Today* programme:

"It is quite absurd that there are people who might be there for the rest of their lives, in theory, who are serving a sentence which Parliament agreed to get rid of because it hadn't worked as anybody intended.

"The trouble is this ridiculous burden on the Parole Board of saying they can only release people if it's proved to them that they're not really a danger to the public.

"No prisoner can prove that - you never know when people are going to lose their control, what's going to happen to them when they're released."

<sup>33</sup> Parole Board, [Parole review changes in response to Osborn judgment](#), 30 July 2014

<sup>34</sup> Parole Board, [Annual report 2013-14](#), pages 9 and 18

<sup>35</sup> NAO, [Managing the Prison Estate](#), HC 735, 6 December 2013, paragraph 21

<sup>36</sup> [HL Deb 12 April 2016 c122](#)



He added that the key thing was to protect the public by making sure fewer criminals go on to reoffend, through helping them find work and accommodation upon release from jail.<sup>37</sup>

### Michael Gove's response

On 20 April 2016, the then Justice Secretary Michael Gove wrote to the Chairman of the Justice Committee about prison reform, covering the issue of IPPs amongst others. Mr Gove said that whilst he had "no current plans" to change the statutory test for releasing prisoners after completion of the tariff, there were initiatives to help IPP prisoners make progress towards release.<sup>38</sup>

Whilst I have no current plans to change the statutory release test, initiatives are underway to make sure that all IPP prisoners have the opportunity to progress towards release by demonstrating that they have reduced their level of risk. NOMS has redirected resources towards early assessment of offenders' needs and prioritising places on offending behaviour programmes, and IPP prisoners continue to be a priority group to receive interventions. NOMS has increased the supply of rehabilitative interventions for IPP prisoners, and has invested in interventions where there is a strong evidence base that they will have a positive impact on offenders' risk. Work is underway to ensure programmes can be delivered more flexibly, supporting greater access and inclusion of offenders with more complex needs such as learning difficulties.

Mr Gove went on to emphasise that completing accredited offender behaviour programmes was not mandatory in order to achieve release.

In a speech to prison governors on 12 May 2016, Mr Gove announced that he had asked the new Chairman of the Parole Board, Nick Hardwick, to develop an "improved approach" to IPP prisoners:<sup>39</sup>

The next area I want to touch on briefly is the future for IPP prisoners. I was struck, like many others, by the candid admission from the former Home Secretary David Blunkett last month that these sentences had developed in a way he had never envisaged. I sympathise with his position.

And in helping to resolve this issue I am grateful to be able to turn once more to Nick Hardwick - in his new role as Chairman of the Parole Board.

There will always be some prisoners whose behaviour and attitudes render them a continuing danger to the public and who need to remain in custody for a significant time.

But there are also - clearly - some prisoners who have served their tariff, who want to prove they are ready to contribute to society and who have been frustrated by failures in the way sentence plans have worked and bureaucracy in the parole system.

I'm pleased work is already being done inside prisons to reinvigorate sentence plans in complex cases, leading to prisoners being released at an appropriate point.

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<sup>37</sup> "[The prisoner 'trapped' 10 years into a 10-month jail sentence](#)", *BBC*, 30 May 2016

<sup>38</sup> [Prison reform](#), Letter by the Rt Hon M Gove to Mr Bob Neill, MP, Chair of the Justice Committee, 20 April 2016

<sup>39</sup> "[Making prisons work](#)", *Speech by the Rt Hon M Gove*, 12 May 2016

But more still needs to be done - and I have asked Nick to help develop an improved approach to handling IPP prisoners which keeps inside those who pose real risks to the public but gives hope and a reason to engage in rehabilitative activity to the majority.

## The Parole Board Chairman

Liz Truss was appointed Justice Secretary in place of Michael Gove on 14 July 2016. Nick Hardwick, who had been tasked with finding an improved approach, gave a statement on existing IPP prisoners on 26 July 2016. He estimated that without Government intervention, the Parole Board could make progress by reducing delays in holding hearings and working closely with prison and probation services to manage release, and this could reduce the number of IPP prisoners by 1,500 in 2020. Faster progress would need legislative or policy changes:<sup>40</sup>

If ministers want to go further and faster than this, that will require legislative or policy changes. Options might include:

- Revising the risk test so that prisoners only continue to be detained if there is evidence they remain a danger to the public.
- Introducing that measure just for 'short tariff' IPPs - those who received a tariff of two years or less but remain in prison long after their tariff has expired because they are unable to prove their risk has reduced.
- Taking executive action to release IPP prisoners who have now served longer than the maximum current sentence for their offence.

All these options have advantages and disadvantages and there are variants of all of them. These are primarily matters for ministers and Parliament. It is important we proceed in a way that treats people fairly but maintains the confidence of the public that their safety and the concerns of victims will be carefully considered. It makes no sense to keep in custody prisoners who can be successfully managed in the community.

Professor Hardwick gave further details of proposals to change the risk test in a BBC interview. [Section 128](#) of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* gives the Secretary of State the power to change the test for release on licence of certain prisoners (including IPP prisoners) by order, and the BBC reported that Nick Hardwick had suggested that Liz Truss should consider using this:<sup>41</sup>

He said Liz Truss, the new justice secretary, should consider activating Section 128 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

The clause allows the justice secretary to alter the test which the Parole Board has to apply when releasing prisoners.

<sup>40</sup> Parole Board Press Release, [Statement on IPP prisoners from Parole Board Chairman](#), 26 July 2016

<sup>41</sup> "[Parole Board chief urges indefinite jail release change](#)", *BBC News*, 26 April 2016

Both houses of Parliament would have to agree to the change, but fresh legislation would not be required.

"There are legislative options that will enable us to change the risk test so it's more about 'is there proof that they're dangerous rather than proof that they're safe?' and there are some other measures that can be taken... to try to cut into that group," Prof Hardwick said.

### Michael Gove's Longford Lecture

On 16 November 2016, Mr Gove returned to the subject of IPPs when he delivered the annual Longford Lecture, under the title "What's really criminal about our justice system?" He proposed that the Government should use the power of executive clemency to release those IPP prisoners who have been in prison for much longer than their tariff:<sup>42</sup>

In terms of pure justice and fairness, there are far too many prisoners, who were sentenced under the IPP - Imprisonment for Public Protection - indeterminate sentence provisions who have served far longer than the gravity of their offence requires and who should be released.

I would recommend using the power of executive clemency for those 500 or so IPP prisoners who have been in jail for far longer than the tariff for their offence and have now – after multiple parole reviews – served even longer than the maximum determinate sentence for that index offence.

And I would also urge that the superb new Chairman of the Parole Board - Nick Hardwick - is given the resources and flexibility to ensure more IPP cases can be processed and more individuals released - ideally with the increased use of GPS tags in some cases.

### Her Majesty's Chief Inspector of Prisons

On 17 November 2016, Her Majesty's Inspector of Prisons published a thematic report on IPPs. In the report's introduction Her Majesty's Chief Inspector of Prisons, Peter Clarke, said it was "widely accepted that implementation of the sentence was flawed" and that "decisive action" was needed for three main reasons:<sup>43</sup>

- Fairness and justice
- Cost to the public purse
- The significant pressures that high numbers of IPP prisoners place on the system pressures placed on the system

HMIP found continuing problems in managing IPP prisoners. Issues with the "quality and consistency of offender management impacted negatively on prisoners' ability to make progress towards release on licence" and "delays in some cases of years in accessing courses, which

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<sup>42</sup> 2016 Longford Lecture, [Michael Gove – What's really criminal about our justice system](#), 16 November 2016

<sup>43</sup> HMIP, [Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection](#), November 2016

was having a detrimental impact upon prisoners' ability to reduce their risk and progress to release."<sup>44</sup>

The report made ten recommendations:<sup>45</sup>

### **To NOMS**

1. NOMS should ensure IPP prisoners are located in the appropriate prison to match their security classification, and to support work with risk reduction and rehabilitation.
2. NOMS should ensure that IPP prisoners receive regular, meaningful contact with offender managers and supervisors, and that casework, including key assessments, is up to date.
3. For some IPP sentence prisoners with a combination of challenging behaviour and underlying personality, cognitive or mental health issues, an enhanced offender management casework process should be used. This would include multidisciplinary input and problem-solving, sometimes at a national level, but always in the host prison, feeding into a clear sentence plan and actions to reduce risk and encourage progression.
4. NOMS should ensure IPP prisoners are offered appropriate and timely interventions to reduce their risk, including, where appropriate, specialist one-to-one work.
5. NOMS should develop more specialist provision for IPP prisoners, similar to the progression regime at Warren Hill. This should be made available to IPP prisoners who are deemed most difficult to engage with, those who are considerably over their tariff, or those who have failed in open conditions or the community.

### **To the MOJ**

6. Subject to a positive recommendation from the responsible offender manager, and the appropriate risk assessment, IPP sentence prisoners should be able to undertake ROTL while in category C resettlement prisons to provide opportunities for them to demonstrate a reduction in risk, to participate in rehabilitative activities and to better facilitate successful progression back to the community.
7. Ministry of Justice should ensure that the Parole Board has sufficient resources to consider IPP cases without undue delays.

### **To NOMS and NPS**

8. NOMS and the National Probation Service (NPS) should better understand the reasons why IPP offenders are failing in the community and being recalled to prison. They should consider whether spending time in open conditions is beneficial in terms of prisoners achieving positive outcomes. Lessons should be learned from this and be reflected in the interventions offered by NPS and the prisons they are located within.

### **To Parole Board for England and Wales**

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<sup>44</sup> ibid p 10

<sup>45</sup> ibid, pp 12-13

9. The Parole Board information and management systems should be used to identify the reasons why IPP prisoners are turned down for progression and/or release on licence, and this should inform work in prisons to reduce their risk.

10. Decision-making about the recall decision for IPP sentence prisoners should be expedited.

The Parole Board welcomed HMIP's report:<sup>46</sup>

The Parole Board is a court like body and must act within the laws and rules laid down by Parliament. The rules state we can only release IPP prisoners when we are satisfied that it is no longer necessary for the protection of the public that they remain detained. Parliament has given the Justice Secretary powers to change the rules and I have given her a number of options about how that could be done, particularly for those prisoners who pose least risk.

The Parole Board is doing its part to make progress in reducing backlogs and releasing IPP prisoners who can demonstrate they are not a risk to the public. The number of IPP prisoners still in prison has reduced from over 6,000 in 2012 to 3,859 today. The Board released more IPPs than ever before in 2015-16, we currently complete around 40 IPP hearings a week and release about 40% of prisoners who come before us. Over 100 new Parole Board Members have now been appointed and as they start work will enable us to make further progress. I agree with the Chief Inspector of Prisons that significantly further and faster progress on the release of IPP prisoners would require decisions by the Justice Secretary."

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<sup>46</sup> Parole Board Press Release, [HMIP report on sentences of imprisonment for public protection](#), 17 November 2016

## 6. What is being done?

### 6.1 The Parole Board's Strategy

On 15 November 2016, the Parole Board published its strategy for 2016-20. One of its five overarching aims is to:

Work with partners to ensure that by the end of 2017 the majority of IPP prisoners have been safely released, or where risk is not judged to be manageable in the community, have clear plans in place that will enable them to progress

The Board plans to do this by:

- Developing a joint strategy with NOMS for IPP prisoners with visible senior leadership
- Examining the scope for the Board to have a 'problem-solving' role approach to progressing IPP prisoners – focusing on case progression and holding to account (whilst avoiding inappropriate involvement in sentence planning and maintaining independence);
- Collaborating with inspectorates and academics to ensure the Parole Board has a deeper understanding of what may delay the progress of IPP prisoners and how that might be resolved;
- Making proposals on any additional legislative measures that may be necessary to ensure the progression of IPP prisoners;
- Reassuring victims and the general public that those IPP prisoners that continue to present an unacceptable risk will remain in custody.

### 6.2 The Government's position

In a recent debate in the Lords on Imprisonment for Public Protection Sentences, the Government Justice Spokesperson Lord Keen of Elie pointed to increased resources given to the Parole Board and the reduction in the number of IPP prisoners being held, but pointed out the "necessary balancing act" in view of the dangers:<sup>47</sup>

Steps are being taken to reduce the population of IPP prisoners. Indeed, in the last year the largest number did in fact qualify for release. The parole service carries out independent examinations for this purpose, and where IPP prisoners fail to respond at these parole hearings the National Offender Management Service has now brought in psychologists and policy experts to undertake a central case review of those IPP prisoners, in the hope that they can complete their tariffs and then progress to open conditions. (...)

The facts are the facts. There is mobility and we are moving in the right direction. There is an increasing reduction in the number of IPP prisoners who are held. Let us remember that the test is whether these prisoners will represent a high or very high risk of serious harm to others when they leave prison. There is a necessary balancing act between the interests of society as a whole and the very great problem which these dangerous prisoners present. We are conscious of that and have provided

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<sup>47</sup> [HL Deb 11 October 2016 cc1779-1781](#)

further resources to the Parole Board. In light of the Osborn decision in the Supreme Court, we have taken forward the requirement for oral hearings, and we are doing everything in our power to ensure that this prison population is reduced. Let me add one further point. In 2012, when the IPP sentence was abolished, there was put in its place some seriously increased sentences for dangerous offenders, including the extended determinate sentence. If those sentences had been applied to this present cohort, it is not easy to say that they would be released in the foreseeable future.

On 22 November 2016, Baroness Goldie answered a supplementary oral question from Labour's Lord Beecham on Prisoners with Indeterminate Terms. Baroness Goldie also pointed out the "encouraging" figures and said that the Government, the Parole Board and the National Offender Management Service had an "action plan" for dealing with the problem:<sup>48</sup>

**Asked by:** Lord Beecham (Lab)

My Lords, the issue of imprisonment for public protection has been frequently raised in this House, notably by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. This unfortunate legacy of the Labour Government leaves almost 4,000 prisoners—4.5% of our overcrowded prison population—remaining in prison after serving their prescribed sentence; 40% of them have served five or more years over their tariff. The Chief Inspector

of Prisons, the chairman of the Parole Board and Michael Gove have all called for action. What steps are the Government taking, and with what resources, as part of the promised IPP review, and what is the projected date for issuing a report? Or does IPP stand for "inordinately protracted policy-making" at a time of unprecedented problems of violence, disorder and self-harm across our massively overcrowded and understaffed prisons?

**Answered by:** Baroness Goldie | **Party:** Conservative Party

I thank the noble Lord for acknowledging the genesis of the problem. No one is disputing that the sentencing system introduced back in 2003 was defective. It is a matter for commendation that that system has now been abolished. However, that does not help us in discussing how best to advance the position of the prisoners within that cohort now affected by that former sentencing system. The noble Lord asked what we are doing: I gently point out to him that the figures are encouraging. He will be aware that the number of releases is increasing and, thankfully, the population within this cohort is diminishing. Those are exactly the trajectories we want to see. He will also be aware that the Government, in conjunction with the Parole Board and the National Offender Management Service, have an action plan that has greatly assisted in mitigating the problem. I remind the noble Lord, however, that we should not lose sight of the context in which people are placed in prison. These prisoners were put there at the decree of the original sentencing court by a judge familiar with the circumstances of the case and of the accused. It is very important that we do not forget the obligation of public

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<sup>48</sup> [HL Deb 22 November 2016 c1839](#)

safety and that we are clear that any releases must be consistent with a robust risk assessment.

New rules came into force on 22 November 2016 giving effect to a ministerial decision to allow the release of IPP prisoners without an oral hearing.<sup>49</sup>

A prisoner serving an IPP who wished to challenge their continued detention would need to seek legal advice in the light of their full circumstances.

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<sup>49</sup> [Parole Board Rules 2016](#) SI 2016/1061; see Parole Board Press Release, [New Parole Board Rules 2016](#)



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