For use at an IPP parole board hearing

Prisoners: Indeterminate Sentences

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Lord Wigley to ask Her Majesty's Government what steps they are taking to address the position of individuals serving indeterminate sentences on public protection grounds who have already passed their tariff. My Lords, I am grateful for the opportunity to have this short debate on the plight of individuals given an indeterminate prison sentence for public protection. This form of sentence was abolished in 2012, but many remain in prison, wholly uncertain as to when they will be released.

IPP sentences were introduced by the Labour Government in the Criminal Justice Act 2003. That Act placed a duty on courts to impose an IPP sentence on offenders who were convicted of violent or sexual offences if there was a serious enough risk that the convicted person might reoffend. A minimum term, or tariff, was placed on offenders, which they had to complete before qualifying for assessment by the Parole Board. It was planned that offenders would undergo rehabilitative courses when in prison prior to their tariff date, to help them "qualify" for rehabilitation. After being released, all IPP offenders would be out on licence for life.

Within two years of the sentence coming into force in 2005, almost 3,000 people had been given an IPP sentence. The figure rose to 8,233 by 2012. Courts had little discretion in choosing whether to impose an IPP sentence, and many offenders were given such sentences after being convicted of offences such as burglary and robbery. Some of these were granted relatively short tariffs-one was set as low as 28 days. The Parole Board was given no extra resources to deal with the huge influx of IPP prisoners. Consequently, there were never enough places on relevant courses, so that the majority of those serving IPP sentences were kept in prison well past their tariff. Many are still there, with no immediate prospect of release.

In January this year, there were 5,335 prisoners serving IPPs in our prisons, two-thirds of whom had passed their tariff. As the Parole Board currently releases some 400 of these inmates every year, at the present rate it will take nine years to clear the backlog. David

Blunkett, who was Home Secretary when IPPs were introduced, recently admitted that the Government had "got the implementation wrong". They certainly had.

Parliament reacted to these difficulties through the Criminal Justice and Immigration Act 2008, which granted courts more discretion in determining whether to impose an IPP sentences on offenders, and provided that such sentences would be used only if the expected tariff was longer than two years. According to the Howard League for Penal Reform, these changes increase the average length for tariffs but reduce the rate of new IPP sentences by a third, yet the number of prisoners who were released remained very low.

In 2012 the then Justice Secretary, Kenneth Clarke, abolished the IPP sentence entirely and replaced it with a two-strikes life sentence system. In spite of a number of attempts in both Chambers to get the abolition applied retrospectively, the Government have, regrettably, steadfastly refused to do so. Today, there are still more than 3,500 offenders languishing in prison past their tariff date, serving a sentence that no longer exists on account of crimes which they may or may not commit in future. This is surely absurd. Had these individuals been convicted after December 2012 and, likewise, if they had been sentenced prior to April 2005-when Section 225 of the 2003 Act became applicable-they would not be in this situation.

The situation is particularly stark for those offenders who were initially given a short tariff. At the end of last December, there were 982 IPP offenders in our prisons who had been given tariffs of two years or less. That represented 18% of all prisoners serving IPP sentences. Had these 982 individuals been sentenced after 2008, they would not have received IPP sentences and would have been released years ago. This is grotesque and totally unfair to the prisoners and their families. A further 2,405 had tariffs of between two and four years, representing 45% of all IPP prisoners. They have no idea how many years they will remain incarcerated. It is hardly surprising that as many as 24 people on IPP sentences have committed suicide while in custody. It is easy to understand why many people deem IPPs to be "life sentences via the back door".

As might be expected, morale within the prison estate has taken a knock. Last year, the Howard League and the Prison Governors Association published research based on interviews with 102 senior prison governors. The majority reported that IPP sentences had a negative impact on both prisoners and prison staff. Furthermore, 92% said that IPPs

resulted in decreased staff job satisfaction, since these prisoners were more likely to be disruptive. Discipline problems inevitably increased, particularly among those sentenced prior to 2008 with short tariffs who see others, sentenced for similar crimes after 2008, come and go while they still languish in their cells. One prison governor said that, "invariably they could see no chance of release as they struggled to access appropriate courses ... This led to anxiety, resentment and discipline problems".

Far from being rehabilitated, some prisoners can become more difficult as time goes by, especially if left to feel that they have nothing to lose and nothing to aim for. Prison governors also said that the additional demands arising from IPP prisoners had a detrimental impact on courses for other prisoners. The needs of individuals serving life sentences were particularly neglected.

The Government must surely find an alternative way of addressing these prisoners' risks. Quite apart from concerns for justice, keeping inmates incarcerated beyond their tariff is a false economy. Every prison place apparently costs some £40,000 a year, so IPPs are costing more than £200 million a year in total. Furthermore, following the judgment of the European Court of Human Rights in the James, Wells and Lee v United Kingdom case, which was in favour of the plaintiffs, it is highly likely that more individuals will take the Government to court to gain compensation. In 2012, the European Court of Human Rights unanimously determined that detaining individuals serving IPPs beyond their tariff without progressing those individuals' rehabilitation was "arbitrary and unlawful". The Government's attempt to appeal the decision was rejected in February 2013.

Under the LASPO Act 2012, the Justice Secretary has the power to put an order to Parliament which would require the Parole Board to direct the release of all inmates serving IPPs, provided that certain conditions are met. The Justice Secretary has indicated that he is not minded to do this, as he argues that it is not appropriate to modify sentences which were passed by the courts. I suggest to the Justice Secretary that he is ignoring the fact that, prior to 2008, the courts felt they had little option but to impose IPPs on someone convicted of any one of 153 different offences. I am sure that many sentencers would support such a move and, besides, the Justice Secretary must accept that he was given these powers for a reason. Indeed, I suggest that the Justice Secretary is acting unreasonably in applying a blanket refusal to use discretionary powers that Parliament has specifically given him and given him for a purpose. Parliament expected the Justice Secretary to use discretion; in refusing to do so, he is surely flouting the will of Parliament.

Consideration should also be given to converting the sentences of those given a tariff of two years or less to a determinate sentence of twice their tariff, which would mean-other things being equal-that many prisoners would be released immediately. The Government must also commit to increasing the funding of the Parole Board so that it can cope with the extra demands being placed on it, as well as providing the necessary resources for rehabilitation courses.

The introduction of IPPs in 2005 was, in no small part, the action of a Government trying to show that they were tough on crime even if the sentence itself was totally disproportionate to the crime committed. Now, this Government seem to be intent on giving out the same message and, incredibly, we learnt earlier this week that the Justice Secretary has tried to limit the number of books that inmates can read. Enough is enough. The Government must put justice and common sense ahead of politics, bring an early closure to the plight of those so unreasonably detained in prison, and remove what is increasingly seen as a disgraceful blot on the good name of British justice.

Lord Dholakia (LD): My Lords, I thank the noble Lord, Lord Wigley, for this debate. I also thank a number of noble Lords who have been drawing attention to the injustice suffered by IPP prisoners. These prisoners have passed their tariff expiry date but their release has been delayed, often for years after their tariff has expired, by a combination of delays. These delays include the time that prisoners spend on waiting lists before they can start offending behaviour programmes such as sex offender treatment programmes, healthy relationships programmes for domestic violence offenders, self-change and resolve programmes for violent offenders, thinking skills programmes for impulsive offenders, victim awareness programmes, and drug and alcohol rehabilitation programmes.

We welcome such programmes but the prisons' capacity to deliver in time is questionable. The delays are unacceptable. These delays also include the time spent waiting for psychological and psychiatric assessments to assess what work or treatment prisoners need to undertake to address their mental health problems or cognitive deficits. Then there are delays in getting a transfer to another prison when a prisoner's current establishment does not run a programme considered necessary to reduce his or her risk and waiting for parole hearings to be listed.

Until recently the Parole Board was making commendable progress in reducing the backlog of cases awaiting a parole hearing. However, the backlog is now rising again as a

result of last year's Supreme Court decision in the case of Osborn, Booth and Reilly-mentioned earlier-which has required more cases of recalled prisoners to be referred to oral hearings. The combination of all these delays means that prisoners who were given short tariffs by sentencing courts can end up spending many years in custody after the tariff period the sentencing judge considered appropriate to punish the offender for his or her crime.

There are four main reasons why the Government should take prompt action to end this indefensible state of affairs. First, the coalition Government have commendably acted to end this injustice for offenders being sentenced now and in the future. Noble Lords on all sides of the House welcome this initiative. They have done so by abolishing the IPP sentence, for which they deserve great credit.

However, it is surely illogical to recognise the need to avoid the injustice of IPP sentences for current and future offenders but to refuse to remedy the same injustice which is being suffered by IPP prisoners who are already in the system. What is the justification for this course? We have had a number of meetings with the Minister of Justice, but to date no acceptable reasons have been advanced.

The second reason is that the failure to release these prisoners on licence is storing up serious problems for the prison system. The IPP sentence has been the main contributory factor to the astonishing increase in the proportion of prisoners serving indeterminate sentences, which rose from 9% of the prison population in 1993 to 19% in 2012. This is simply unacceptable. The longer that existing IPP prisoners remain in prison, the greater the pressure of numbers in the prison system and the worse the delays in the system are likely to become.

The third reason is that there is no tenable principled objection, either legal or moral, to retrospective legislation in this situation. I am aware that the Government have argued that it is wrong to interfere with sentences which have been passed by the courts, but Governments of all persuasions have repeatedly done so over the years, for example, by altering the rules on eligibility for parole, by increasing or reducing remission, by introducing early release with electronic monitoring and in a range of other ways, so why not in the case of IPP prisoners? Retrospective legislation is objectionable when it interferes with existing sentences in a way which puts prisoners in a worse position than the sentencing court intended. However, I can see no objection to retrospective legislation

which puts existing prisoners in a better position in order to avoid the anomaly of treating them worse than more recent offenders who have committed identical crimes but are now being given determinate sentences.

The fourth reason is that the necessary changes can be introduced in a way which does not unacceptably increase risk to the public, a point which is often stated by the Minister. Most offenders who would previously have received IPP sentences are now given extended sentences. These sentences include a determinate custodial term followed by an extended period of supervision. If the Government are not attracted by the idea of substituting simple determinate sentences for existing short-tariff IPP sentences, they could legislate to replace them with a form of extended sentence. This could provide for the prisoner to be released after a period equal to double the tariff followed by an extended licence period. This licence period could last for 10 years or even for an indefinite period. During the licence period, the offender could be recalled to prison if he or she breached licence conditions, reverted to drug or alcohol misuse, failed to engage with offending behaviour programmes or engaged in risky behaviour which indicated that his or her risk was increasing. If they wanted, the Government could provide for exceptions to be made. For example, IPP prisoners could be released on licence after double their tariff period, unless the Parole Board identified exceptional circumstances indicating that the offender presented a particularly high risk to the public.

For all these reasons, I hope that the Government, who have acted so courageously to prevent the injustice of IPP sentences being imposed on offenders sentenced in the future, will not close their mind to the need to end the identical injustice being undergone by IPP prisoners who are already in the system. It brings the criminal justice system into disrepute if different standards are adopted for those who can benefit now as against those who were previously sentenced and fell into the IPP category. I hope that the Minister will be more positive on this than the previous Minister.

Lord Phillips of Worth Matravers (CB): My Lords, I am grateful to the noble Lord, Lord Wigley, for providing the opportunity to say a few words on this topic, which is close to my heart.

A little over six years ago, when delivering the judgment in the Court of Appeal in the appeals of Walker and James, I commented that the Secretary of State had not provided the resources needed to give IPP prisoners a fair chance to demonstrate to the Parole

Board, once the time for review arrived, that they were no longer dangerous. I added that the consequence of that was that a proportion of IPP prisoners would, avoidably, be kept in prison for longer than necessary either for punishment or for the protection of the public. Since then, Parliament has repealed the provisions for the imposition of IPP sentences. However, as predicted, a significant body of prisoners remain incarcerated because they have been denied the opportunity to take the steps necessary to demonstrate that their release will not pose an unacceptable risk to the public.

There are at least three reasons why that state of affairs should not be tolerated. The first is that indefinite detention of that kind infringes Article 5.1 of the European Convention on Human Rights. That possibility was one to which we drew attention in Walker although we, and the Appellate Committee of this House, presided over by my noble and learned friend Lord Hope of Craighead, did not consider that that point had been reached in the instant case. However, as the noble Lord, Lord Wigley, pointed out, Strasbourg did not agree, holding in the case of James and two other applicants that their detention after the expiry of their tariff periods and until the provision of the appropriate rehabilitative courses was arbitrary and a breach of Article 5.1. Not all may be in sympathy with that decision, but indefinite detention for want of resources is manifestly objectionable.

The second reason why the current state of affairs should not be tolerated is that it is unjust. Defendants sentenced before the IPP regime was introduced or after its repeal, whose offending and past criminal records are not distinguishable from those sentenced to IPP, are being released from prison while the IPP prisoners remain detained. It is hard to understand why the change in penal policy that led to the abolition of the IPP sentence should not apply equally to those subjected to it.

The third reason why the current state of affairs should not be tolerated is that it is economically absurd. We pay some £40,000 per head to keep detained prisoners who will then become entitled to substantial compensation for their detention.

What, then, should be done? One can readily appreciate the objection to the wholesale release of all IPP prisoners who have served the tariff period. However, the noble and learned Lord, Lord Lloyd of Berwick, will make some balanced and principled proposals for the release of some of those prisoners, which have my support. I shall leave him to explain them to the House. There will, of course, be a risk that prisoners released will reoffend, but that is an inevitable consequence of release from custody, and one that has

rightly concerned the Minister for Justice and his predecessors, not merely in the context of potentially dangerous offenders.

Three years ago Kenneth Clarke, when Justice Secretary, declared that prison was a waste of money and emphasised his intention to curb reoffending. Earlier this week Chris Grayling, the current Justice Secretary, was reported as saying that our rehabilitation system was flawed because of lack of support for those discharged from prison. That is the positive point that I wish to make.

Rehabilitation courses in prison are, of course, important. However, perhaps even more important are the steps that should be taken outside prison, in the community, to prevent young people who are at risk from entering the criminal justice system and to help those who have been discharged from prison from being sucked back into it. Rehabilitation can sometimes be provided more effectively in the community after discharge from prison than within the prison system. James was himself ultimately released on licence on the directions of the Parole Board in reliance of the fact that arrangements had been made for his accommodation in a hostel and for him to take part in rehabilitation courses in the community.

I should declare my involvement with three different organisations in the private sector whose work is relevant in this context: Endeavour Training, Youth at Risk, and the St Giles Trust. The first two aim to give young people who are vulnerable the self-respect that leads to respect for others and to integration within rather than outside society. The third, the St Giles Trust, trains ex-offenders to help others, both within and outside prison. I understand that it is government policy to rely heavily on the help of such organisations to prevent reoffending and that funding will be made available to those with a proven success rate. It is easier to demonstrate this for organisations that cater for those who have served prison sentences rather than those whose goal is to ensure that vulnerable young people do not enter the system in the first place, but I hope that the Government will bear it in mind that resources provided to both are likely to save money in the long term. I suggest that this is the lesson to be learnt from the IPP debacle.

The huge cost of keeping people in prison competes for resources with the cost of trying to keep them out of prison. The former always appears the more urgent. But whether offenders are potentially violent or not, society will be best served, and valuable resources will ultimately be saved, if we do not skimp in funding the steps that are needed to address

the individual problems and inadequacies that are the root causes of the majority of offending and reoffending.

The Lord Bishop of Lichfield: My Lords, I am most grateful to the noble Lord, Lord Wigley, for his initiative and to the noble Lord, Lord Dholakia, and the noble and learned Lord, Lord Phillips, for their very helpful introductions.

As a general principle, it is accepted in this country that people should be sent to prison because they have been convicted of an offence rather than because of the risk that they will offend. Indeterminate tariffs are even now available for the most serious offences, in the form of life sentences, and extended sentences now provide a way to manage and contain risk in relation to those convicted of serious violent and sexual offences which do not call for a life sentence.

As we have heard, the IPP sentences were brought in with the intention of applying them to just a few hundred prisoners. Things went wrong, and, after some attempts to deal with their unintended effects, they were abolished. It is neither here nor there that this chain of events spread across successive Governments. A number of options were tried: some worked, and this one did not. Even though IPP has now been abolished, approximately 5,500 IPP prisoners remain within the system, nearly two-thirds of them past their tariff. At the current release rate of about 400 a year, it could take nine years to clear the backlog.

I spent some time recently with an intelligent and engaging Somali prisoner who has taught himself near perfect English. This man was given an 18-month tariff, but last Christmas was his ninth in prison. What an injustice, and what a huge expense. One prison officer spoke to me of, "a game of tag between the Immigration Services and the Parole Board which has produced deadlock for years".

Two significant factors cause delay in release when the tariff has been served: programmes and process. Up to now the dependence on a particular kind of offending behaviour programme, on cognitive behavioural principles, as an important key to reducing risk, has caused quite a lot of problems-in particular, the shortage of supply of such courses, the complicated transport system between centres, and the exclusion criteria, which mean that those without certain educational skills or attainments, and some with learning difficulties or mental health problems, cannot enrol on these courses. Effective as the programmes doubtless are, for those eligible for them, as a criterion of reduction in risk they are only a

proxy for a more complex and dynamic process of learning and change. A large body of recent research on desistance from crime supports the view that reduction in risk is a much broader process, engaging the whole person and their understanding of their own life and values, than has sometimes been thought. Indeed, mainstream research has shown that faith can be a significant factor for many.

Secondly, on the process for determining how far risk has been reduced, the Parole Board is under enormous pressure, which has grown greatly following a recent judgment requiring oral hearings in many more cases than before. I welcome the sensible suggestion made by the Prison Reform Trust, that the decision on a move to open prison conditions should be made by the prison governor, as already happens with those on determinate sentences, rather than the Parole Board. If that is not done, then there is a strong case for reinstating the recently removed right to legal aid for IPP prisoners in relation to their recategorisation decisions.

The challenges that remain from the IPP experiment are obviously complex. Many of these prisoners have committed crimes which have victims, and the risk of further offending is not to be taken lightly. Many other well informed suggestions have been made towards resolving these issues, but if we attend to the two elements which I have mentioned-the programmes and the process-I believe that we shall be moving in the right direction towards a just and safe resolution of these difficulties. It is surprising that a manifest injustice like this has not attracted more attention.

Lord Lloyd of Berwick (CB): My Lords, I do not intend to go into the background of the IPP sentence, which was so well described by the noble Lord, Lord Wigley, to whom we are all grateful for initiating this debate, but propose to concentrate instead on a particular group of prisoners who were given a tariff of less than two years before Section 225 of the 2003 Act was amended in 2007, of whom there are 773.

I start by giving the House a breakdown of that figure. These figures were given to me by the noble Lord, Lord McNally, in a letter he wrote to me on 24 August 2013. I suggest that they ought to be on the record. Thirty-seven offenders were given tariffs of six months or less. Of these, 11 are now more than four years over tariff. The remaining 26 of that group are five years over tariff-in other words, 10 times the tariff they were originally given. One hundred and eight were given tariffs of six to 12 months. Of these, 46 are four years over tariff and 59 are five years over tariff. Two hundred and eighty were given tariffs of

between 12 and 18 months; 110 are four years over tariff and 98 are five years over tariff. Three hundred and forty-eight were given tariffs of between 18 and 24 months. Of these, 124 are four years over tariff and 92 are five years over tariff. I suggest that these figures speak for themselves-something very serious has gone wrong.

There are two reasons why there are so many IPP prisoners with short or very short tariffs. In the first place, there was no minimum tariff, as there should have been. That was a grievous mistake. Secondly, until 2008, the sentence was, in effect, compulsory. Provided certain conditions were fulfilled, the judge had no discretion. Therefore, an offender who would in the normal way have been given between two and four years for a robbery, burglary or simple arson, was given an IPP sentence not because he was particularly dangerous but because, until 2008, the sentence was mandatory, as I say.

When Section 225 was repealed by the LASPO Act in 2012, very few IPP prisoners had been released, partly, of course, because courses were not available for them but also because the release test which the Parole Board had to apply was exactly the same for them as for those serving life sentences for much more serious crimes. Therefore, it is not surprising that a large backlog of these short and very short tariff prisoners had built up. Parliament was well aware of this backlog, and of the reason for it. It was clear that something had to be done. By Section 128 of LASPO, Parliament provided the solution. It gave the Secretary of State the power to modify the existing release test, with a view, obviously, to speeding up the rate of release. Section 128 paved the way for the Secretary of State to take action. He could require the Parole Board to direct release if it was satisfied that certain conditions existed. It was, or would have been, as simple as that. There is nothing in Section 128, whether expressly or by implication, that requires the new release test to be based on an assessment of risk.

The first question is: should the Secretary of State exercise the power he has been given by Parliament? The second question is: if so, what should the new test be. As to the first question, the answer is very clear. Of course he should exercise the power he has been given. There are many reasons why he should do so, but the most convincing to me is the one given by the noble Lord, Lord Wigley. If these 773 prisoners, with whom alone I am concerned, had committed exactly the same offences but after 2008, instead of before, they could not have been given an IPP sentence; they could have been given only a determinate sentence. We know what that determinate sentence would have been-namely, twice the

tariff they were given. They would all have been out by 2010 at the latest. Instead, they are all still in prison.

Prisoners, like everyone else, have a strong sense of just desserts. I know of no sentence that has created such a strong sense of injustice as the IPP sentence. I know that because of the many letters that I and others have received from prisoners and their families, and from a recent meeting that I had with their families, some of whom expressed the views that I have just tried to describe.

What reason, then, has the Secretary of State given for not exercising this power? Only that it would not be appropriate to alter sentences lawfully imposed by the court. The short answer to that is that if Parliament had not thought it appropriate, it would not have enacted Section 128.

I come to the second question. What should the new release test be? I wrote to the Secretary of State on 13 March, inviting him to consider converting the sentence of these 773 prisoners into determinate sentences equal to twice their tariffs. This would be fair because they would be the sentences that we know the prisoners would have received if the IPP sentence had not been available when they were sentenced. In his reply on 19 March, the Secretary of State said: "It would be inconceivable and indeed irresponsible for the Government to release individuals that the independent Parole Board Â… assess as continuing to pose risks".

What this seems to overlook is that these very same people, if sentenced after 2008 for exactly the same offences, would necessarily have been given a determinate sentence and would have posed exactly the same risk when released before 2010 as they would have done if released today.

Finally, I suggest that so far from it being irresponsible for the Secretary of State to exercise the power he has been given, it would be irresponsible of him not to do so. Indeed, it is his duty to do so in the interests of justice, for all the reasons I have given. In doing so, he would be righting a grievous wrong that these 773 prisoners have suffered-a wrong for which the Government ought to take responsibility.

Lord Marks of Henley-on-Thames (LD): My Lords, in 2008 the previous Administration recognised the difficulties that the mandatory imposition of IPPs had caused when they made the changes to increase judicial discretion and remove short-tariff

sentences for sentences passed after July 2008. Yet there remain in prison many who were sentenced to IPPs before that date and whose short-tariff sentences were completed long ago, as the noble and learned Lord, Lord Lloyd, has just pointed out. He gave us the numbers and they are truly shocking. I pay tribute to the noble and learned Lord for his sustained and impressive campaigning on this issue over a long time.

In 2010, through the then Prisons Minister, my honourable friend Crispin Blunt, the Government publicly recognised that the present position was indefensible because it was clear that many IPP prisoners were being held well beyond their tariff dates for no better reason than that the Prison Service was unable to provide the courses necessary for them to satisfy the Parole Board of their suitability for release. Then, in 2012 this Government, to their credit, recognised the injustice of IPP sentences when they abolished them in the LASPO Act. Also in 2012, as has been pointed out by the noble and learned Lord, Lord Phillips, the European Court of Human Rights recognised the injustice when it decided the case of James, Wells and Lee v the United Kingdom, broadly on the ground that, given the lack of the rehabilitation courses necessary to establish suitability for release, the continued detention of the applicants in that case amounted to the arbitrary deprivation of their liberty, contrary to Article 5(1).

Neither the changes introduced by the Criminal Justice and Immigration Act 2008 nor the abolition of IPP sentences by the LASPO Act had any retrospective effect. The result is that we are now left, as the noble Lord, Lord Wigley, pointed out in his extremely helpful and informative introduction to this debate, with an impossible and indefensible injustice.

The current position is that on the one hand there are in prison many who are serving indeterminate terms well after their tariff sentences have been fully served, often with short-tariff sentences imposed before the two-year restriction was introduced. Many of those prisoners see, and have, no hope of early release because the necessary resources to secure their release are still not being provided in sufficient quantity or at sufficient speed. The system is still overwhelmed by its inability to cope with the stresses placed upon it. On the other hand, many of those sentenced to similar tariff terms more recently-after abolition-who would have received an IPP sentence before abolition have now been, and are being, released after serving their determinate sentences in full, well before those who are still held on IPPs, having been sentenced earlier.

What should the Government do? As the noble and learned Lord, Lord Lloyd, pointed out, the LASPO Act, by Section 128, specifically gives the Secretary of State wide powers to deal with the injustice of existing IPPs. The first power is to provide by order that, following a referral, the Parole Board must direct release if certain conditions are met; the second is the converse-that he may provide that the Parole Board must direct release unless certain conditions are met. The careful use of either power would enable the Secretary of State to put an end to the injustice highlighted in this debate that now disgraces our criminal justice system, while ensuring that prisoners whose release would genuinely present a serious danger to the public are kept in prison until their release is judged safe. Yet, despite the power contained in and legislated for in Section 128, the Government have so far resisted retrospectively altering sentences on the basis that those were sentences passed by judges acting in accordance with the law as it was at the date of sentencing.

Your Lordships' House is very familiar with the arguments against retrospective legislation but, as my noble friend Lord Dholakia pointed out, they are generally deployed to avoid doing injustice to persons who were unaffected by restrictions before the passage of legislation. I have never heard them deployed in favour of continuing an injustice to those currently affected by unfair and oppressive legislation.

There is a further answer to the argument that bringing forward release dates now would overturn decisions of judges made according to the law in force at the time of passing the sentences. Many of the IPPs imposed were imposed because the judge's hands were tied, often by judges acting through gritted teeth in compliance with what they regarded as, and what was a bad law. That is no ground for demanding respect for those sentences now.

Whether the best solution is to treat all existing prisoners on the basis on which they would have been treated had they been sentenced after 2012, or to give them the option to be so treated, as the noble and learned Lord, Lord Lloyd of Berwick, suggests, or whether it would be best simply to introduce a presumption in favour of release unless continuing incarceration can be clearly justified, under the second limb of Section 128, the present injustice cannot in conscience be permitted to continue. If my noble friend's response to this debate goes no further than saying that the Government will simply try a little harder to speed up the rate of release of prisoners caught by IPPs, that will not, I suggest, be a response that goes anywhere near meeting the need for a genuine solution. Tinkering around the edges of the old system will not be a solution.

It is important to remember that there is a special feature of IPPs. They were sentences imposed not for crimes that had been committed but for fear of crimes that might be committed in the future. It is clear that your Lordships recognise, as we all must, that public protection is an important function of punishment. However, it is also important that those involved with the criminal justice system and the public at large have the confidence that our system of justice is indeed fair and just. Where that system perpetrates and then maintains an obvious injustice, long after it has become recognisable and has in fact been recognised as such, our system cannot and does not deserve to command that confidence. We who support this Government have been proud of the rehabilitation revolution that we have introduced. The continued detention on IPPs of prisoners long beyond their tariff dates is the antithesis of that rehabilitation revolution, and we should end it.

Lord Ramsbotham (CB): My Lords, I apologise to the House for not being in my place when the noble Lord, Lord Wigley, started his speech, but I was unavoidably detained on the telephone. I therefore seek the indulgence of the House to continue with the remarks that I intended to make. I congratulate the noble Lord, Lord Wigley, on securing this important debate, and, as the noble Lord, Lord Marks, has done, salute my noble and learned friend Lord Lloyd who for years has tirelessly pursued the injustices and other issues connected with this sentence. I absolutely agree with every word of what he suggested and has put forward to the Secretary of State for consideration.

Rather than look at the legal side, which has been so well covered by other noble Lords, I shall focus a little more on some of the practical issues, particularly those that show a tremendous need for improvement within the National Offender Management Service. In doing so, I would like to refer to two reports which were published in 2008-longer than the length of World War 2 ago. One is by the Chief Inspectors of Prisons and of Probation and one is by the Sainsbury Centre for Mental Health, as it was then called, of which I am currently a vice-president and was formerly an adviser. I do so because one of the things that worries me in the reports of two inquests-one of which I reported to the House in June 2012 and one which took place last month-is that they disclose failures in the National Offender Management Service which ought to be eliminated.

In June 2012 I reported to the House the case of Shaun Beasley, who had been awarded a two year 145 day tariff IPP in 2007. The Parole Board said that he needed to do a course, so he was sent from Littlehey prison to Parc prison in Wales, where he was told that the

course he required was not available and would not be for two to three years. This was in early August and on 24 August he rang his family and said that he could not cope any more. His family immediately rang the prison; nothing was done; and he was found hanging in his cell shortly after midnight.

On 28 February this year, the inquest took place of Kieron Dowdall who, as an 18 year-old, was given a three and a half year IPP tariff in 2006. In October 2010 he was sent to North Sea Camp open prison as part of his release plan. By early January 2012, when nothing had happened, his mood and mental wellbeing significantly deteriorated. He absconded and was picked up, having said that he was trying to kill himself. He was moved to Lincoln prison and suddenly from there, without warning, was moved to Stafford. When he got to Stafford he telephoned his family several times, saying that he had a feeling of hopelessness, and his family tried repeatedly to ring the staff at Stafford but were told to put their concerns in writing. He was found hanging in his cell on 27 January, shortly after which it was discovered that there had been an incomplete form on his potential suicide waiting in Lincoln prison which had not been forwarded to Stafford.

I mention those cases because in the report in 2008 put forward by the Chief Inspectors of Prisons and of Probation, they said that one of the main problems with the management of IPP prisoners was that there was no clarity over who had overall responsibility for them, and they recommended the appointment of a senior lead to look after their interests and their programming. I have bored the House many times over this because it has always struck me that one of the failings of our Prison Service is not to have someone, some named person, responsible and accountable for each type of prisoner and for seeing that what happens to them is consistent and is exactly the same all over the country. Any manager or Minister who wants something done, sends for the person responsible and tells them to do it. If you do not have someone, nothing gets done. Nothing has been done with IPP prisoners. No one is responsible or accountable. It is no good managing these sort of people, with all their various needs, by committee.

They went on to say that the National Offender Management Service should do two things. First, it should collate and make publicly available up-to-date management information about IPP prisoners, including tariff length, ethnicity, location, assessments completed, needs identified, interventions required and progression. Those are not available. If you ask what these people need, whatever it may be, you cannot get an answer. Secondly, it should carry out an intervention needs analysis of those sentenced to IPP and an

assessment of the resources required and available to meet those needs in a sufficient number of prisons at appropriate levels of security across the country.

Other noble Lords have already mentioned that one of the problems of the IPP prisoner is that, as happened with one of the prisoners I have talked about, Mr Beasley, when they arrive at the place they have been sent to for a course, it is not available. That is simply not good enough and will not do. Unless and until the Prison Service and the National Offender Management Service get their act together and put someone in charge who is responsible for evaluating these things, nothing will happen. The nine years to clear the backlog will go on and on because more people will not have completed their journey through the revolving door.

If I have one other wish, it is that the burden of proof, as it is sometimes called, should be re-examined in order to ease the pressure. The noble Lord, Lord Marks, hinted at that in his remarks. I think it would be irresponsible of the Secretary of State not to ease the pressure on the overstretched Prison Service by requiring the state to produce evidence that someone still represents a risk rather than the person having to prove that he does not. Until drastic action is taken, this wretched problem is going to go on and on because the resources will not increase, and without those, we will never correct this dreadful misjudgment.

Lord Hope of Craighead (CB): My Lords, it is a privilege to follow the noble Lord, Lord Ramsbotham, and I join him and others in thanking the noble Lord, Lord Wigley, for initiating this debate. I spent some time this morning reading the report in Hansard of the debates held during the Committee stage of the Legal Aid, Sentencing and Punishment of Offenders Bill on 9 February 2012. They ended with the noble Lord, Lord McNally, the then Minister, moving that what is now Section 128 of the Act should stand part of the Bill. Having read those debates, I appreciate that several noble and noble and learned Lords who have spoken this afternoon took part in those debates too. They really are veterans of this campaign. Tributes have rightly been paid to the noble and learned Lord, Lord Lloyd of Berwick, who stands out as a leader on this issue. This is a sustained and admirable campaign to which I have introduced myself as a relative newcomer.

However, the issue itself is not entirely new to me. As the noble and learned Lord, Lord Phillips of Worth Matravers, pointed out, I sat on the appeals to this House against the decisions of the Court of Appeal in the cases of Walker and James, and had the great

advantage of sitting with the noble and learned Lord, Lord Brown of Eaton-under-Heywood, who was in his place earlier, and the noble and learned Lord, Lord Judge, who was then the Lord Chief Justice. It gave us no pleasure to have to dismiss those appeals on the ground that the sentences that had been passed against the appellants could not be said to have been unlawful. Fortunately, our decision that their Article 5 convention rights had not been infringed was not followed when they took their cases to Strasbourg, so it is now clear that these prisoners will have claims by way of damages. However, that makes the situation even worse for the Government than we thought it was when we heard those appeals. There will be a large bill to pay for this mistake, in addition to the costs of incarceration, and it is growing day by day and hour by hour as we speak.

We all know that the way the IPP sentences were introduced was regrettable. The statutory scheme itself was ill conceived. As the noble Lord, Lord Marks, pointed out, it was overly prescriptive and left no room for the exercise of any judicial discretion. As a result, far too many prisoners were sucked into it. There is a warning here for this Government too. I need only mention the debate that is still going on about the wording of some of the provisions in Clause 14 of the Immigration Bill, with which the Minister will be familiar, to make the point. It is most unwise to leave judges with no room for manoeuvre. Legislation by its very nature is a blunt instrument. It cannot foresee everything that may happen in the future. Facts vary from case to case. It should be left to the judges to fine-tune what the Government seek to achieve. They can be relied on to follow the guidance and can make it fit the facts. There was no need to spell out in Section 229 and Schedule 15 what was required for them to assess dangerousness and it was entirely misguided for the then Government to insist on doing so. We all know, too, that the system was comprehensively underresourced. I need not go over the details, which have been so well rehearsed by noble Lords who have spoken before me. All I can say is that the situation they have described is one that everyone knows has no place in a decent society.

That all having been said-one can of course pile objection upon objection in looking at the situation we now have-the real point of this debate, as I see it, is to focus attention on what can be done to put an end to the situation. The most interesting part will therefore be what the Minister can tell us in his reply. It was his Government who, very commendably, provided an opportunity to find a way out when they introduced Section 128 of the LASPO Act. As the headnote puts it, that section gives the Secretary of State power, exercisable by order, to change the test for the release of, among others, an IPP prisoner. However, that

provision came into effect as long ago now as 3 December 2012, yet here we are, more than a year later, and nothing has been done to put it into effect: no order has yet been made, nor has there been any announcement of when we can expect one.

On 9 February 2012, the noble Lord, Lord McNally, refused to be drawn when he was asked to say when an order under that section could be expected to be made. He said that time was needed to see how the probation rules could be adjusted in the light of the argument to which he had been listening. The Committee was told that a new system of offender management was to take effect as from April of that year and that it was expected to "result in improved targeting". So the first question I have for the Minister is whether he could tell us what the result has been of the exercise which the noble Lord, Lord McNally, told the Committee about.

Looked at from the prisoners' point of view, there has been no obvious improvement in their situation at all. Why, then, have no steps been taken to give effect to Section 128? Having asked that question, I have to say with all honesty that I entirely understand the view that the Secretary of State has taken, which is that he has to respect the rule of law. It is not open to him, with great respect, to alter the terms of these indeterminate sentences; nor is it open to him to alter the system that Section 239 lays down for the performance of its functions by the Parole Board. As the House made clear in its judgment in the case of James in 2009, the detention of these prisoners is, and will remain, lawful until the Parole Board gives a direction for their release. The default position-which is the position they are regrettably now in-is that, until the Parole Board gives that direction, protection of the public requires that they should be confined.

Moreover, Section 239(6) of the 2003 Act was not repealed. As a result, when he is giving directions to the Parole Board under that Section 128 of the 2012 Act, and indeed under Section 239, the Secretary of State is required to have regard to, "the need to protect the public from serious harm from offenders", and the need to secure "their rehabilitation". I cannot see an escape from that situation as the legislation stands at present-that is what the law requires. One simply cannot assume, without looking at the facts of each case, that all those in a given category are fit for release immediately.

However, the situation is not beyond repair. Section 128 of the 2012 Act requires the Secretary of State to steer a narrow course. As the noble and learned Lord, Lord Lloyd, said, it is his duty to exercise the power which Parliament gave to him. There are no short

cuts but I cannot understand why he is unable to find a way to exercise that power in the way that Parliament contemplated. The headnote talks about changing the test for release. Can the Minister tell the House what the current tests are, what steps are being taken to see why they are not fit for purpose-as they obviously are not-and what thought has been given to changing them so that they are? I do not see that as changing the terms of the sentences; it is all about changing the test to be applied by the Parole Board. There is great force in the point already made that the power under Section 128(1)(b) should be used, which inverts the onus and requires the Parole Board to direct release unless the Prison Service can satisfy the board that the prisoner should not be released.

There is one further point that I should like to make. There are other things that could be done. The noble Lord, Lord Ramsbotham, drew attention to them in the debate on 9 February 2012. He said then, as he did this afternoon, that there was a need for someone to be, "made responsible and accountable to the Secretary of State".-[Official Report, 9/2/12; col. 437.]

Having looked at the idea, there is much to be said for that proposal. Again I ask the Minister: what thoughts have been given to the proposal that was made in that debate in 2012? If it is difficult for him to answer the question immediately, will he be kind enough to write to us to explain what the answer is to the various questions that have been put?

Lord Judge (CB): My Lords, this debate has highlighted the malign contribution to the problem that we are discussing today of Section 229(3) of the Criminal Justice Act 2003. The court is obliged to make an assumption of dangerousness on the basis of one conviction, which might of course be something dreadful such as rape or murder, where the dangerousness speaks for itself, but might also include, among the more than 100 cases that my noble friend Lord Wigley identified, a voyeur-that is, a peeping tom; exposure-that is, a flasher; or indeed, and I do not make this point facetiously but to underline the absurdity of the legislation, somebody who has sexual intercourse with a corpse, who might be somebody who needs rather a lot of assistance and psychiatric help.

The lesson that the legislation should show us is the absurdity of anything that seeks to bind a sentencing judge to make a decision that is based not on evidence but on diktat. An evidence-based decision about what an appropriate sentence should be is the only way in which justice can be done. This legislation has been put right and we are all grateful that it has. The court still has to assess dangerousness. There are still occasions when the court

will decide that an individual defendant should never be released because he-or, very rarely, she-represents such a serious continuing danger.

I do not think that the judiciary would be deeply concerned about any interference with constitutional principle if we had a look at all the cases of those who are still subject to imprisonment for public protection, when the transcript will show that the judge made the order because he was in effect compelled, or felt that he was compelled, to do so, or by the application of the powers that have been given under Section 128 of the recent legislation.

Lord Kennedy of Southwark (Lab): My Lords, as other noble Lords have done, I thank the noble Lord, Lord Wigley, for putting this Question down for debate. He has raised an important issue for your Lordships' House to debate this afternoon.

Imprisonment for public protection was introduced by the previous Labour Government in 2005. It was designed to ensure that dangerous, violent and sexual offenders stayed in custody for as long as they presented a risk to society. When Labour introduced IPP in 2005, it was for a very good reason: protection of the public, with sentences put in place to keep the most violent, persistent offenders off our streets. If a judge felt that offenders were a risk to society, they could hand down an IPP, which meant that the offenders had to prove to the Parole Board that they were ready to rejoin society by completing rehabilitation programmes. Punishment and reform went hand in hand.

I accept entirely that there were problems with the introduction and in 2008 changes were introduced to deal with some of the issues we have heard about today. Labour made changes to the administration of the scheme and proposed a new "seriousness threshold" that would have to be satisfied before the court could impose the sentence. This was to make sure that the sentence was reserved for very serious and violent offenders-those who are the biggest risk to the public. As a result of these changes, the number of offenders serving a sentence of imprisonment for public protection dropped, but serious offenders were released from prison only when it was deemed safe to do so. Evidence shows that there is a low rate of reoffending by prisoners released having served a sentence of imprisonment for public protection.

Instead, as the noble Lord, Lord Wigley, said, the Government's new regime introduces a "two strikes" policy so that a mandatory life sentence will be given to anyone convicted of a second serious sexual or violent crime. Where is the public protection here? Effectively, the

policy says, "We won't make the mistake a second time". Does the Minister believe that the new complicated system of extensions and parole for different sentences will keep the public safe?

Imprisonment for public protection was criticised for contributing to prison overcrowding, but what will the effect of this new policy be? Does the Minister know? Our prisons have serious problems; overcrowding is a real issue. I share the astonishment of the noble Lord, Lord Wigley, at the Justice Secretary seeking to limit prisoners' access to books, as has recently been announced.

Under this Government, 17 local prisons have been closed, with 5,000 places lost in the prison system in the last year alone, leaving remaining prisons close to bursting point. Does the Minister agree that overcrowding in the prison system-pushed to breaking point by the Justice Secretary, with prison places lost before anything is built to replace them-is making it harder effectively to rehabilitate those still serving a sentence of imprisonment for public protection.

To work effectively, the Government's new sentencing regime needs investment in the Parole Board. Lack of investment in the Parole Board and the shortage of courses for rehabilitation have caused, and are still causing, a backlog. Without proper investment, the Government's new plan will face the same problems. What resources are the Government putting in place to ensure that these offenders are properly rehabilitated before they are released back into the community?

We are hearing reports that courses and activities are being cancelled, or that prisoners cannot attend courses, due to there not being enough prison officers to escort prisoners from the wing to the classroom. Now that imprisonment for public protection has been abolished, what is the plan for dealing with prisoners who remain within the system over their tariff? There is not one. The Government's new policy will not avoid the criticisms levied against the previous system that it seeks to replace. It offers no solution to deal with those prisoners still in the system over their tariff. Let us be clear: the chances of being rehabilitated in prison are now lower than ever.

We cannot have offenders who come out of prison just as or more likely to offend as when they went in. We must also do all we can to make sure that the first crime is the last crime. To make a real difference, rehabilitation requires investment. We need investment in drugs

and alcohol programmes and mental health services. We need rehabilitation courses to be available in all prisons and a more effective and joined-up approach to reducing reoffending in the long term.

What is most worrying is that a recent report from the National Audit Office found that fewer sex offender treatment programmes are being provided in prisons. In February this year, the BBC reported that, in 2012-13, there were around 11,000 sex offenders in prison in England and Wales but that only 1,092 treatment programmes were completed, while sex offenders in jails in England now make up 15% of the prison population. There are more sex offenders in prisons, but fewer treatment programmes.

The Government have been playing catch-up ever since they abolished imprisonment for public protection. Serious, violent individuals must not pose a risk to the public and proper due process must be followed before their release. They should be supported by courses and programmes and an effectively resourced Parole Board to allow rehabilitation to take place.

Judges need the all the tools at their disposal to sentence people in the right way so that they are punished and reformed. The public will want reassurance that there are enough prison places over the coming years to keep safely behind bars those found guilty of serious crimes and that enough is being done to rehabilitate and reform prisoners to stop them reoffending.

The new regime needs the same investment in parole hearings and rehabilitation courses to make it work as was needed by imprisonment for public protection. There is no solution for thousands of prisoners over their tariff; the same problems remain. This is indicative of the fact that the revolution in rehabilitation promised by the Government in their review is nowhere to be seen. I again thank the noble Lord, Lord Wigley, for bringing this Question before the House.

Minister of Justice (Lord Faulks) (Con): My Lords, I thank the noble Lord, Lord Wigley, for securing this debate. The issue of how to manage those prisoners who are still serving indeterminate sentences of imprisonment for public protection is important and one that has generated considerable interest, not least in this House.

Indeed, our IPP prisoners could hardly have more effective advocates than the noble and learned Lords who have spoken this evening. Nor has their interest and concern been

recent; it has been sustained and tenacious. At a recent meeting convened by the Bingham Centre, where the noble and learned Lord, Lord Lloyd, spoke, those issues were thoroughly discussed. Although I was unable to attend myself because of parliamentary duties, he was good enough to send me a copy of his remarks there, so the Government do not pretend to be unaware of the full range of anxiety that has been expressed about the issue.

Much has been said about the history of IPP sentences. Briefly, to remind the House, the IPP sentence was first brought into effect in 2005, by the Criminal Justice Act 2003, to target those offenders likely to pose a risk of serious harm to the public. Imposition of the sentence was mandatory in certain circumstances. More IPP sentences were imposed than were originally anticipated-that is something of an understatement. The noble Lord, Lord Kennedy, said that there were problems with introduction. That, too, is something of an understatement. I understood him to be rather unrepentant about the sentence as a whole, but be that as it may. It was not until the reforms introduced by the Criminal Justice and Immigration Act 2008 that a minimum tariff of two years was imposed, barring exceptional circumstances. Further, the mandatory requirement for imposition of the sentence in certain circumstances was removed-a "may" for a "must". On 3 December 2012, the sentence was abolished by the LASPO Act. However, abolition was not made retrospective, so those prisoners already serving IPP sentences continue to do so until the independent Parole Board finds their assessed risks to have been reduced enough to be manageable in the community.

Although this Government have abolished the IPP sentence, it would not be right or appropriate in our view retrospectively to alter sentences that had been lawfully imposed prior to their abolition. When the LASPO Bill was being debated, a number of amendments were proposed in this House that would have changed retrospectively the sentences imposed by courts. However, none of those resulted in a change to the legislation to the effect to which some arguments have been directed this evening. That is usual-it is generally the case that when changes are made to the sentencing framework, they do not impact on current prisoners, and changes will not be made to sentences that were lawfully passed at the time they were imposed. One reason for that is because a court will have had regard to the range of sentences then available when imposing a sentence, so it will not necessarily be clear what sentence would have been imposed under a different statutory regime. Indeed, it would be quite wrong to assume in any individual case what sentence a court would have imposed under such a different regime.

On IPPs, at the higher end there will be IPP sentences that have been imposed where a life sentence might otherwise be available. At the lower end, given that the courts had found risk, it is not clear whether an extended sentence or a standard determinate sentence would have been imposed. Versions of the extended sentence are available under more than one recent statutory framework, but other considerations then arise: would the various thresholds for these sentences have been reached under different statutory frameworks? What would the le