

## Parliamentary Briefing

### Victims and Prisoners Bill

Committee stage, House of Commons, 20 June 2023

*The Law Society is the independent professional body for 220,000 solicitors in England and Wales. We represent and support our members, promoting the highest professional standards and the rule of law.*

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

#### 1. Introduction

We are deeply concerned about changes within the Victims and Prisoners Bill to the parole system. These changes pose significant risks to access to justice and risk creating uncertainty and complexity in the parole system.

Provisions to give the Secretary of State powers to usurp the Parole Board's decision making will remove sensitive decisions from those with the necessary expertise and experience to make them, with no obvious justification, inevitably weakening the quality of such decision.

#### Summary

- The Bill will give new powers to the Secretary of State, to make decisions about liberty that have been referred to the Parole Board in certain serious cases. These can be made without a hearing or legal representation.
- The Parole Board will also be able to refer cases to the Secretary of State if it feels it cannot adequately assess the risk to public safety.
- These powers have serious implications for access to justice and the common law principle that decisions about liberty should be made by an independent tribunal.
- The Law Society and Bar Council are jointly calling for the Bill to be amended to remove these proposals from the legislation.

#### 2. Changes to parole

The Bill will give new powers to the Secretary of State to overrule the Parole Board in certain cases. The legislation will also allow the Parole Board to be able to refer cases back to the Secretary of State if it feels it cannot adequately assess the risk to the public.

These changes will override the common law principle that decisions about liberty are for an independent and impartial tribunal, and may seriously erode access to justice for prisoners. We are not convinced these changes will make a positive difference for victims and are calling for their removal.

## I. Powers to usurp parole decisions

The Bill gives the Secretary of State the power to usurp the Parole Board and retake a parole decision for prisoners involved in serious offences, including murder, terrorism, and serious sexual offences. The Secretary of State will be able to quash a release decision and make it themselves if the Parole Board has decided to release a prisoner in one of these cases.

The Secretary of State refers cases to the Parole Board and is a party to the proceedings. There is an obvious risk of injustice, or the perception of injustice, where a party to the proceedings also has the power to take over the proceedings and determine their outcome.

In the *Pinochet* case Lord Hope set out the very lengthy history of common law which makes being a judge in your own cause objectionable and concludes that "*Public confidence in the integrity of the administration of justice is just as important, perhaps even more so, in criminal cases*". Therefore, this power erodes this key common law principle and risks undermining the integrity of the administration of justice in parole cases, which are all about the liberty of the subject.

Should this measure be used, there is no right for legal representation, no access to legal aid or a specific process to follow. A Secretary of State may interview a prisoner, but there is no obligation to do so or for a hearing of any kind.

There is also limited scope for an appeal. A prisoner would be able to appeal to the Upper Tribunal on judicial review grounds or on the basis that the release test has been met, no other grounds are allowed. As liberty is at stake, this is an extremely limited safeguard, while there is no requirement for legal aid to be available.

The power of the Parole Board to refer a case to the Secretary of State because it is unable to make a decision appears to be highly unusual. It seems difficult to imagine a situation where the Parole Board feels it does not have the expertise to make a decision, but the Secretary of State does. If the Parole Board was not satisfied that a prisoner could be released safely, they would not direct that person's release.

We believe it should be a fundamental principle of our legal system that decisions about the liberty of citizens are made by an independent and impartial tribunal except where Parliament expressly provides to the contrary, a decision that must involve intense scrutiny. These proposals would undo decades of the proper separation of powers on this issue.

### Recommendations

- The Bill should be amended to remove powers for the Secretary of State to intervene in Parole Board decisions and for the Parole Board to be able to refer cases back to the Secretary of State as these provisions pose a serious threat to standards of independent justice.

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