

HOUSE OF LORDS

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3rd Report of Session 2019–21

Terrorist Offenders (Restriction of Early Release) Bill

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Matt Korris (Clerk), Matt Byatt (Policy Analyst) and Alasdair Johnston (Committee Assistant). Professor Stephen Tierney and Professor Jeff King are the legal advisers to the Committee.

Contact details

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk

Terrorist Offenders (Restriction of Early Release) Bill

Introduction

1. The Terrorist Offenders (Restriction of Early Release) Bill was introduced to the House of Commons on 11 February 2020. It was fast-tracked through all its stages in the Commons on 12 February and was brought to the Lords on 13 February. It is expected that all Lords stages will be taken on 24 February.
2. The Bill's purpose is to ensure that terrorist offenders are not automatically released before the end of their custodial term without the agreement of the Parole Board. It changes the release point for offenders who have committed a relevant terrorism offence from half-way to two-thirds of the way through their sentence and refers those offenders to the Parole Board for assessment before release.

Sentencing of terrorist offenders

3. The majority of offenders in England and Wales who are given custodial sentences are subject to standard determinate sentences, which means they will be released automatically once they reach the half-way point of their sentence, without any oversight by the Parole Board.¹ Once released, such offenders will be on conditional licence. Breach of conditions or further offending could result in recall to prison.
4. Other offenders are not subject to automatic release at the half-way point of their sentence but instead are only released subject to a decision by the Parole Board. For example:
 - Offenders sentenced to life imprisonment are only released subject to a decision by the Parole Board after the offender has served the minimum custodial term set by the court. The licence remains in place for life and the offender is subject to recall.² Terrorist offenders sentenced to life imprisonment are not subject to the Bill.
 - Those who are sentenced as dangerous³ offenders may receive an Extended Determinate Sentence, composed of a custodial term and an extended licence period up to a maximum of eight years.⁴ Early release is possible at the two-thirds point of the custodial term if the Parole Board approves the release.⁵ Following release, such offenders are

1 Criminal Justice Act 2003, [section 244](#)

2 Criminal Justice Act 2003, [section 254](#)

3 The dangerousness test is met if there is a significant risk to members of the public of serious harm from the offender committing further specified offences, as set out in Part 3 of Schedule 15 to the Criminal Justice Act 2003.

4 If an offender has met the test for "dangerousness", an extended determinate sentence may be imposed if (a) the offender has been convicted of a specified offence listed in Schedule 15 to the Criminal Justice Act 2003, (b) the court is not required to impose a life sentence, and (c) either the appropriate custodial sentence for the current offence would be four years or more, or the defendant has already been convicted of an offence listed in Schedule 15B (i.e. the most serious terrorist offences) at the time the current offence was committed.

5 Criminal Justice Act 2003, [section 246A](#)

subject to licence conditions and could be recalled to prison to serve the remainder of their sentence.⁶

- Offenders convicted of specified terrorist offences⁷ may be sentenced as “offenders of particular concern” if neither a life sentence nor an extended determinate sentence is passed. This comprises an appropriate custodial sentence and an additional 12-month licence period.⁸ An offender of particular concern may be released by the Parole Board at the half-way point. If released, the offender would then be on licence and subject to recall.⁹
5. The Bill extends to Scotland, where prisoners serving custodial sentences of less than four years are entitled to automatic release at the half-way point. Those serving sentences of four years or more are eligible for release at the half-way point subject to the approval of the Parole Board.¹⁰ When released, they will be on licence and can be recalled. Prisoners serving extended sentences in Scotland are eligible for release at the half-way point subject to Parole Board approval.¹¹

Fast-tracking

6. The Bill is being fast-tracked through both Houses. Fast-tracking legislation restricts the time for parliamentary scrutiny by limiting the opportunities for members of each House to reflect on the debates on a bill or consult outside bodies. Consideration of this Bill is further constrained as select committees with an interest in its contents—the Commons Home Affairs and Justice committees, and the Joint Committee on Human Rights—have yet to be established.
7. In our 2009 report, *Fast-track legislation: constitutional implications and safeguards*, we recommended that, for legislation subject to fast-tracking, the Government should set out its justification for fast-tracking in the explanatory notes to the bill.¹² The Government has done so for this Bill. It notes that “it has not been possible to give interested parties and outside groups an opportunity to influence” the Bill and that it does not include a sunset clause. However, the Government states its intention “to introduce a Counter-Terrorism (Sentencing and Release) Bill later in this session”,¹³ which implies a further opportunity to consider the policy in the current Bill.

6 There are different release provisions for those who received extended determinate sentences prior to 12 April 2015. For those given an extended determinate sentence between 3 December 2012 and 13 April 2015, if the custodial period was less than 10 years and the offence was not listed in Schedule 15B to the Criminal Justice Act 2003, release is automatic at the two-thirds point. If the custodial period was less than 10 years but the offence is listed in Schedule 15B, or if the custodial sentence was more than 10 years, release is subject to Parole Board approval at the two-thirds point. Other prisoners may be serving an Extended Sentence for Public Protection. For those sentenced before 14 July 2008, release is subject to the approval of the Parole Board at the half-way point. For those sentenced after 14 July 2008, release is automatic at the half-way point.

7 Specified offences are listed in [Schedule 18A](#) to the Criminal Justice Act 2003.

8 Criminal Justice Act 2003, [section 236A](#)

9 Criminal Justice Act 2003, [section 254](#)

10 [Prisoners and Criminal Proceedings \(Scotland\) Act 1993](#)

11 For such sentences imposed before 1 February 2016, prisoners are entitled to automatic release at the half-way point.

12 Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116), para 185

13 [Explanatory Notes to the Terrorist Offenders \(Restriction of Early Release\) Bill](#), paras 9–18

8. **While we recognise the Government's imperative to legislate for matters of public safety, it is regrettable that this Bill is being fast-tracked when other select committees that may wish to scrutinise it have yet to be established. The Government must ensure that its next counter-terrorism sentencing bill is given sufficient time for parliamentary scrutiny, including evidence-taking sessions in public bill committee to allow for civil society and others to have their say, so that the impact of this fast-tracked Bill can be fully assessed.**

Extending the time before terrorist offenders are eligible for release

9. The central constitutional issue raised by this Bill is human rights. The Joint Committee on Human Rights would usually take the lead in scrutinising bills with human rights implications, but as it is yet to be established we consider the issue here.

Proportionality

10. The Government's central policy aim, and its justification for fast-tracking this legislation, is to prevent terrorist offenders who pose a risk to the public from being released from prison before the end of their sentence. In broad terms, the Bill does two things: it changes the point at which terrorist offenders may be released from half-way to two-thirds of the way through their sentence; and it ensures that the Parole Board will assess all such offenders before release. It may be that only the second of these measures is strictly necessary to achieve the Government's aim. The involvement of the Parole Board, whether at the half-way or two-thirds point of a sentence, should be sufficient to ensure that terrorist offenders who pose a risk to the public are not released early. **The Government must explain why the extension of the period that certain terrorist offenders will serve in prison needs to be included in this fast-track legislation and could not have waited for the next counter-terrorism sentencing bill.**

Fairness

11. Another aspect of extending the time served by terrorist offenders is that this measure applies retrospectively to those currently serving prison sentences. While the Secretary of State has declared that the Bill is compatible with the Convention rights as set out in the Human Rights Act 1998, it is also worth considering the fairness and proportionality of the policy in respect of human rights principles. The Government has explained why a Parole Board assessment could be useful in ensuring that only those prisoners who pose no further risk to the public should be released. However, it is not clear why the deadline for any such assessment should be prolonged. **If this retrospective change is not required to protect the public, it is not clear that there is sufficient justification for retrospectively extending the time served in prison by those offenders who the Parole Board could have assessed as posing no further risk to the public at the half-way point of their sentences.**

Parole Board resources

12. The Bill provides that those terrorist offenders who would automatically have been eligible for early release will instead be assessed by the Parole Board and released early only if they are deemed not to pose a risk to the

public. This increases the number of offenders that the Parole Board will be required to assess.

13. The Government’s impact assessment for the Bill states that “the introduction of discretionary release at the two-thirds point for these offenders would lead to increased workload for the parole system and Legal Aid Services of fewer than 50 newly eligible offenders a year, with a combined cost of less than £0.1m annually.”¹⁴
14. While the measures in this Bill may not add significantly to the work of the Parole Board, some of these cases may need to be decided urgently, which could put pressure on its operation. While the chief executive of the Parole Board has said that it can cope with the extra work,¹⁵ this is in addition to a caseload that has increased significantly in recent years.¹⁶ In 2018–19 the Parole Board held 7,903 hearings but still had a backlog of around 1,658 outstanding cases.¹⁷ **The Government should explain how it intends to ensure the Parole Board has sufficient resources to reduce the number of outstanding cases given the increase in its workload.**

14 Ministry of Justice, *Terrorist Offenders (Restriction of Early Release) Bill Impact Assessment*, 5 February 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864910/to-signed-impact-assessment.pdf [accessed 13 February 2020]

15 Beckie Smith, ‘Parole Board can cope with planned reforms for terror convicts, chief exec says’, *Civil Service World*, 4 February 2020: <https://www.civilserviceworld.com/articles/news/parole-board-can-cope-planned-reforms-terror-convicts-chief-exec-says> [accessed 13 February 2020]

16 National Audit Office, *Investigation into the Parole Board*, 28 February 2017: <https://www.nao.org.uk/wp-content/uploads/2017/02/Investigation-into-the-Parole-Board.pdf> [accessed 13 February 2020]

17 The Parole Board of England and Wales, *Annual Report and Accounts 2017–18*, HC 1334, July 2019, page 10: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727619/Parole_Board_Annual_Report_Accounts_2017-18.pdf [accessed 13 February 2020]; The Parole Board of England and Wales, *Annual Report and Accounts 2018–19*, HC 2497, July 2019, page 12: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818677/The_Parole_Board_for_England_Wales_Annual_Report_and_Accounts_2018-19.pdf [accessed 13 February 2020]

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTERESTS

Members

Lord Beith
 Baroness Corston
 Baroness Drake
 Lord Dunlop
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord Pannick
 Baroness Taylor of Bolton (Chair)
 Lord True
 Lord Wallace of Tankerness

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple
 Baroness Corston
No relevant interests
 Baroness Drake
No relevant interests
 Lord Dunlop
No relevant interests
 Lord Faulks
No relevant interests
 Baroness Fookes
No relevant interests
 Lord Hennessy of Nympsfield
No relevant interests
 Lord Howarth of Newport
No relevant interests
 Lord Howell of Guildford
No relevant interests
 Lord Pannick
No relevant interests
 Baroness Taylor of Bolton (Chair)
No relevant interests
 Lord True
No relevant interests
 Lord Wallace of Tankerness
No relevant interests

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Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.