



FITZWILLIAM COLLEGE  
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# Parole: Changes and Challenges

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# History of parole in England and Wales

1967–1991: *Early release*: the rehabilitative ideal and penal pragmatism

See Tom Guiney's excellent

*Getting out: Early Release in England and Wales 1960 – 1995: a comparative historical perspective*

1991–2003: A greater focus on risk and 'risky' offenders.

2003–today: Still 'risk' and *delayed* release for increasing numbers of prisoners

# Today?

Life sentences

Extended sentences

Recall

And now 'terrorists'

PB sits in a funny place: semi-independent, 'surrounded' by MJ (PPCS), HMPSS (OMs and OSs)

# The Worboys/Radford effect?

- *R (DSD, NBV, Mayor of London, News Group Newspapers Ltd) v Parole Board and Secretary of State for Justice* [2018] EWHC 694 (Admin)
- *Review of the law, policy and procedure relating to Parole Board decisions* (28 April 2018)
- Parole Board (Amendment) Rules 2018 (S.I. 2018 No. 541) – summaries, largely for victims
- Parole Board Rules 2019 (SI 2019. No 1038) (reconsideration decisions now published <https://www.bailii.org/recent-decisions.html> )

# Recall, Review and Re-Release of Recalled Prisoners Policy Framework

- Re-issued: 11 February 2020 (replaced PSI 30/2014, AI 22/2014, PI 27/2014)
- For lifers and extended sentences: Offender managers must demonstrate a “causal link” in the current behaviour that was exhibited at the time of the index offence.
- Not so for determinate sentenced offenders
- PPCS is responsible for providing a copy of the recall dossier to the prison, and for notifying the offender manager of the recalled prisoner’s return to custody, within one working day of receipt of notification of return to custody. All recalled prisoners must be provided with a copy of their recall dossier and a copy of the recall information leaflet within one working day of receipt from PPCS.

# Terrorist Offenders (Restriction of Early Release) Act 2020

- Changes apply to offenders **currently** serving a custodial sentence for terrorist offences
  - First reading in HC 12 February 2020 – all finished!
  - (Main issue = why 2/3rds instead of ½?)
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- Counter-Terrorism (Sentencing and Release) Bill coming soon  
.... And a Royal Commission?

# **The Criminal Justice and Courts Act 2015 (Consequential Amendment) Regulations 2020 (SI 2020/157)**

## **Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 (SI 2020/158)**

- Prisoners serving a fixed-term sentence of 7 years + for any relevant violent or sexual offence (offence listed in Part 1 or 2 of Schedule 15 to the CJA 2003 Act for which a sentence of life imprisonment may be imposed) cannot be released on licence until they have served two-thirds of their sentence.
- In force 1 April 2020: NO Parole Board involvement....

# Investigating the characteristics of the Board

- Membership: what skills are required of a PB member?
- Burdens and standard of proof ? (see *R (Maughan) v HM's Senior Coroner for Oxfordshire* - argued in Supreme Court yesterday)
- The Parole Board must be 'satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined' (test introduced by the Criminal Justice Act 1991 s. 34(4)(b), and now s. 28(6)(b) of the Crime (Sentences) Act 1997)
- The nature of 'evidence' – exploring the dossier .....



# The meaning of a 'sentence'....

- Beginning and ending when?  
We need to know when they end: are 'post-sentence measures' part of the sentence.... The Government is right to review MAPPA, civil protective orders etc. (questions of resources as well as effectiveness)
- From the PB's perspective: 26,000 decisions last year (15,000 new cases), and 'only' 3,600 prisoners got release or open conditions....
- What are their measures of success? SFOs? Is recall a successful outcome? (Latest OM Stats (Jan 2020): in latest ¼, 15,699 people released and 7,015 license recalls ....)

# Trust and legitimacy?

Public confidence? (Are you interested in appearances or reality? Public awareness more important than public confidence? What if the public are right to have little confidence in some aspects of the penal system?)

Defendable or defensive decision-making? (cf. current project on inquests and other investigations into SFOs)

What about the 'seamless sentence'? (On-going project with Loraine Gelsthorpe and Jake Phillips on deaths of people following release from prison (and on recall))

When is the right time to release someone? The tension between proportionality/consistency and individualised sentences. Early release easier to justify than delayed release? Purpose of parole?

# Some further reading!

Padfield, N and Liebling, A, with Arnold, H ((2000) *An exploration of decision-making at discretionary lifer panels* (Home Office Research Study 213

Padfield, N. (2002) *Beyond the Tariff: Human rights and the release of life sentence prisoners*

Padfield, N. (2017) Parole Board oral hearings – exploring the barriers to release  
<https://www.ssrn.com/abstract=3081035>

Padfield, N (2017) Parole Board Oral Hearings 2016-2017 - Exploring the Barriers to Release: Stage Two of an Exploratory Study  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3081039](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3081039)

Padfield, N (2019) Giving and getting parole: the changing characteristics of parole in England and Wales 1967-2019, 11 *European Journal of Probation*, Vol 3, 153-168

Phillips, J, Gelsthorpe, L and Padfield, N (2019) '[Non-custodial deaths: Missing, ignored or unimportant?](#)' *Criminology and Criminal Justice* 160 -178.

- And do email me on [nmp21@cam.ac.uk](mailto:nmp21@cam.ac.uk)