

**PAROLE IN IRELAND
THE WAY FORWARD
EXPERIENCE FROM OTHER
JURISDICTIONS**

DUBLIN 25 OCTOBER 2013

**THE PAROLE BOARD FOR
SCOTLAND**

2 How Parole Operates in Scotland

- The Parole Board for Scotland established by the Criminal Justice Act 1967 to **advise** the Secretary of State for Scotland on early release and recall.
- Changed by Prisoners and Criminal Proceedings (Scotland) Act 1993.
- Since 2003 the Board **gives direction** to Scottish Ministers
- Parole Board (Scotland) Rules 2001

3 How Parole Operates in Scotland

- Crime (Sentences) Act 1997
- Management of Offenders etc. (Scotland) Act 2005
- Crime and Disorder Act 1998
- Criminal Justice (Scotland) Act 2003
- Social Work (Scotland) Act 1968
- Local Government (Scotland) Act 1973
- The Convention Rights (Compliance) (Scotland) act 2001

4 The Board

- Currently 28 members
- Appointed for 6 to 7 years
- 10 legal members
- Others include
 - psychiatrist,
 - psychologist,
 - social workers,
 - criminologist,
 - prison governor,
 - police officer,
 - business background,
 - civil service background.

5 The Board

- Held by the House of Lords to be a judicial body for the purposes of ECHR
- Independent of the Scottish Government and Scottish Prison Service and impartial in its duties
- Members are appointed through the public appointments system

6 Who is Entitled to Parole

- Life sentences/Order for Lifelong Restriction (expiry of punishment part)
- Determinate sentences over 4 years including extended sentences (half way point)
- Sex offenders serving more than 6 months
- consideration of recall and re release

7 The Process

- Must be referred to Board by Scottish Ministers
- Parole Unit

8 Dossier

- Index Offence Papers
 - Indictment
 - Criminal History
 - Reports
 - Appeals
 - Trial Judge's Report
- Prison Based Social Work Report
- Home Based Social Work Report

9 Dossier

- Scottish Prison Service Reports
 - Lifer Liaison Officer
 - Early Release Liaison Officer
 - Programmes
 - Drug tests
 - Governor's Reports
- Prisoner's representations
- Victims representations
- Scottish Ministers representations

10 Hearings

- Tribunals
 - Lifers
 - Extended Sentences
 - OLR
- Casework
 - Determinates
 - Recalls
 - Rerelease
 - Licence Conditions
 - HDC
 - Termination of supervision
 - Oral Hearings

11 Tribunals

- Members appointed by Chairman of Board
- Chair must be a legal member
- Two other members who may be general or legal members of the Board.

12 Tribunals

- May now be undertaken by live link (interests of justice) - Board decides
- Parties must be given opportunity to make representations.
- All Board members to be in same place
- Scottish Ministers cannot be with the Board members

13 Tribunals

- Tribunal regulates its own procedure
- A preliminary hearing may be held by the chairman sitting alone
- Prisoner entitled to be represented
- Parties may apply to have a witness attend
 - Has to be agreed by chairman if not has to give reasons.
- Held in private subject to certain exceptions

14 Tribunals

- Procedure
 - Prisoner
 - Scottish Ministers
 - LLO/ERLO - Questions
 - Scottish Ministers Rep. – Questions
 - Prisoner – Questions
 - Scottish Ministers Rep summing up
 - Prisoner Summing up
 - Decision – 10 working days to intimate in writing
- Simple majority

15 Casework

- Two groups of 3 members
- Meets weekly
- In private
- Paper based
- Provision for oral hearing

16 Casework

- Determinates/Recalls/Rerelease
- Procedure
 - Cases allocated
 - Detailed note prepared
 - Presentation
 - Discussion
 - Decision
 - Minute

17 Statutory Guidelines

- “...the Board may take into account **any matter which it considers to be relevant** including ...’
 - (1) Nature of offence
 - (2) Conduct since sentence
 - (3) Risk of committing any offence or causing harm to any other person if released, remaining on licence or re released
 - (4) What the person intends to do and the likelihood of that person fulfilling those intentions

18 What the Board Needs to Know

- Background information to set the context about the person we are considering i.e. their life up to this sentence particularly matters relevant to their offending behaviour.
- History of offending - patterns and attitude towards it.
- Index offence and the prisoners attitude to it now and during the sentence. Has this changed?

19 What the Board Needs to Know

- Work undertaken while in custody
- Response to any programmes. What have outcomes been? Is there a demonstrable change of attitude or behaviour?
- Is there relevant work which still requires to be done?
- Attitude to employment
- Any health issues which will be of significance including mental health

20 What the Board Needs to Know

- Risk assessment. Application of an appropriate approved tool.
- Links to risk factors which will be present in the community to which the prisoner will return.
- How will prisoner occupy his time in the community?
- Relapse prevention plan?
- How will the risk be managed in the community?

21 Licence Conditions

1. Reporting on release
2. Supervision requirement
3. Comply with requirements of supervising officer
4. Keep in touch with supervising officer
5. Inform of change of residence or employment
6. Inform if arrested or questioned by the police
7. Be of good behaviour and keep the peace
8. Not travel outwith Great Britain without permission.

22 Licence Conditions

- Additional conditions - general
 - Reside in accommodation as approved
 - Undertake addictions counselling as directed
 - Job search and advice referral as directed

23 Licence Conditions

- Sexual offences - children
 - Not to undertake paid, unpaid or voluntary work without approval
 - Not to have any contact with any child under the age of 17 without prior approval
 - Not to enter parks, playgrounds etc where children habitually resort
 - Not associate with known sex offender

24 Licence Conditions

- Internet Child Pornography
 - You shall not have any means to access the internet at home or any other location without the prior approval of your supervising officer and you shall allow monitoring of all computer, mobile phone or other equipment capable of accessing the internet as directed by your supervising officer.
 - Not associate with known sex offender

25 Licence Conditions

- Internet Child Pornography
 - You shall allow police officers and social workers responsible for or involved in your supervision, or others acting on their instructions, to inspect electronic equipment used by you and capable of accessing the internet when requested to do so, with or without advance notice

26 Licence Conditions

- Victims
 - You shall not approach or communicate in any way or attempt to approach or communicate in way with (victim's name) without the prior approval of your supervising officer
 - You shall not enter the area of (name) as defined by your supervising officer without prior approval

27 Licence Conditions

- Domestic/Offences against women
 - You shall inform your supervising officer of any relationship you enter into with any woman

28 Licence Conditions

- Alcohol
 - You shall not consume alcohol

29 Licence Conditions

- Tagging/Curfew
 - You shall be subject to electronic monitoring
 - You shall remain within the confines of your approved

30 Positive Aspects

- Quality of Parole Board Members
- Legal Assistance
- Partners and Stakeholders
 - Prisons
 - Scottish Ministers
 - Social Work
 - Police
- Prisoners do not apply - automatic consideration
- Informality

31 What Could be Improved

- Dossiers
- Informality
- Rules of Procedure
- Pre-Hearing process
- Written pleadings
- Technology
- Proportionality
- Involvement of Ministers
- Adversarial v Inquisitorial
- Economical Appeal process
- Sift
- Complexity of legislation

32 Prisoner Involvement

- Gets copy of dossier
- Entitled to Legal Aid
- Can make written submissions
- Is present at Tribunals/Oral Hearings and takes part
- Can opt out
- Intelligence material

33 Victim Involvement

- Can opt in to get information about release
- Can make written submissions
- Legislation pending to give victims right to make representations in life sentences.

34 Legal Assistance

- Never refused
- Quality
 - Preparation
 - Presentation

35 Appeal Procedures

- No appeal
- Judicial Review

36 Time Limits

- Lifers
 - Expiry of punishment part
 - Review no less than every 2 years
- Extended sentences
 - Any time
 - If considered before, no less than a year
- Determinates
 - Consideration at 50%
 - Automatic release at 66%
 - 16 months.
- Intimation of decision
 - 10 working days
- ECHR

37 Risk v Re-Offending

- Protection of the public – West v Parole Board [2002] 1 WLR 350 Lord Bingham
 - “.....the Parole Board is **concerned**, and **concerned only**, with the assessment of risk to the public : it must balance the hardship and injustice of continuing to imprison a man who is unlikely to cause serious injury to the public against the need to protect the public against a man who is not unlikely to cause such injury”

38 Risk v Reoffending

- Jason Baker v Parole Board for Scotland [2006] CSOH 31 per Lord Carloway –
 - “The principal concern of the first respondents (PBS) was the **safety of the public**, i.e. to decide whether there was an unacceptable risk of reoffending. A balancing exercise was required.....the appropriate weight of individual factors was for a parole board to determine”

39 Risk v Reoffending

- Does the prisoner present an acceptable risk?
- For a lifer the test is risk of **harm to the public** Sec 2 PCP(S)A 1993
- In the case of extended sentences where a prisoner has been recalled the test is risk of **serious harm** Sec 13A PCP(S)A 1993
- Determinate – **Can risk be managed?**

40 Compassionate Release

- For Scottish Ministers
- Board has advisory role

41 Parole Change

- Parole Change Project Board