

The Parole Process Northern Ireland

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Parole hearings – Process and Procedure

Parole Commissioners

Types of sentences

Single Commissioners

Panel Hearings

Risk based approach

Recalls

Legislative background

- Parole Commissioners replace Life Sentence Review Commissioners by virtue of Article 46 of the Criminal Justice (NI) Order 2008
- Three primary legislative frameworks –
 - i. The 2008 Order
 - ii. The Life Sentences (NI) Order 2001
 - iii. Parole Commissioners' Rules 2009

Sentences

- Life Sentences – tariffs
- Indeterminate Custodial Sentences (ICS)
- Extended Custodial Sentences (ECS)
- Determinate Custodial Sentences (DCS) – recall and review only

Parole Process

- Referral – beginning of the process six months before end of tariff (Life or ICS) or the Parole Eligibility Date in ECS cases.
- PCNI then write to the prisoner setting out the timetable for consideration of the case. This will include a request for information on his legal representatives.

Dossier

- Dossier is prepared by the relevant section of the Prison Service
- It will contain information on the index offence, information relating to progress in prison, psychological and/or other medical reports, risk assessments and PBNi reports. Will be copied to prisoner's representatives – note closed material process
- Written submissions from prisoner's representatives are invited who can also apply to have material added to the dossier.

Single Commissioner Stage

- A Single Commissioner (legal, medical or lay) will be assigned to the case.
- Dossier of papers will be provided to the Commissioner
- Commissioner may issue directions for further or more up-to-date information

Single Commissioner Stage

Single Commissioner will either:

- i. Provisionally direct release
- ii. Provisionally direct that the prisoner not be released – prisoner entitled to panel hearing
- iii. Direct that the case be considered by a panel of three Commissioners.

Panel Hearing

- Panel will be made up of three Commissioners – generally one legal (chair), one medical and one lay.
- Panel may consider case on the papers should parties agree
- If hearing to proceed, date will be notified generally 6-8 weeks in advance of hearing.

Procedure at the Panel Hearing (1)

- DoJ representative will outline DoJ's view of risk in the case
- DoJ's witnesses
- Prisoner's evidence

Procedure at the Panel Hearing (2)

- Panel will decide within 7 days
- Decision is binding on DoJ.
- If for release, prisoner is released with licence conditions.
- If not, recommendation for further review and action to be taken in the interim.

Tests for release (1)

- Legislative test in life sentence cases (Life Sentences (NI) Order 2001 – Article 6:
- (4) The Commissioners shall not give a direction under paragraph (3) with respect to a life prisoner to whom this Article applies unless—
- (a) the Secretary of State has referred the prisoner's case to the Commissioners; and
- (b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.

Tests for release (2)

- ICS/ECS prisoners – Article 18 of the Criminal Justice (NI) Order 2008:
- (4) The Parole Commissioners shall not give a direction under paragraph (3) with respect to P unless—
- (a) the Secretary of State has referred P's case to them; and
- (b) they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be confined.

Tests for release (3)

- DCS prisoners – Criminal Justice (NI) Order 2008 – released without reference to PCNI but if recalled then test:
- (6) The Parole Commissioners shall not give a direction under paragraph (5) with respect to P unless they are satisfied that—
- (b) in any other case, it is no longer necessary for the protection of the public that P should be confined.

Definition of “serious harm”

- Serious harm is defined by the 2008 Order as being “death or serious personal injury, whether physical or psychological”.
- How is risk assessed?
- Written reports, risk assessments (ACE, ROSH etc), oral evidence from PBNi, psychology and others, prisoner’s evidence

Recalls

- Life Sentence Prisoners, if released, are subject to life licences.
- ICS Prisoners will be subject to licence for at least 10 years
- ECS Prisoners will be subject to licence for the licence period as set by the court.
- DCS Prisoners will be subject to licence for the licence period as set by the court

ALL SUBJECT TO POTENTIAL RECALL

Recall Process

- Process generally initiated by PBNI
- Recommendation to recall by PCNI although not binding on DoJ
- Then process begins again as per Single Commissioner and Panel hearings stage

DCS RECALLS

- PCNI Rules do not apply to DCS cases
- PCNI operate as if they do
- In DCS recalls, decision of the Single Commissioner is final – no review as of right by Panel
- Request for oral hearing – review by Commissioner – three issues
 - i. Factual dispute,
 - ii. oral evidence on risk necessary,
 - iii. or fairness to prisoner.

Recall Test

- Recall Test is as per earlier tests but practical application different
- PCNI will ask if risk has increased since release
- Basis of this is fairness to the recalled prisoner
- Difficult process and numbers of recalls increasing dramatically
- Potentially severe implications for recalled prisoners in terms of initial recall and future if not released on review

Judicial Review Challenges

- Recent increase in challenges
- Issues – adjournments, witnesses, hearsay evidence
- Warboys case in England
- Court of Appeal in NI to hear Toal case in September

Comparisons with procedure in RoI

- Statutory v non-statutory
- Panel based v Board
- Decision of panel binding on DoJ v recommendation to Minister
- Role for prisoner and legal representation
- Re-referral periods

QUESTIONS?