



An Bille Parúil, 2016
Parole Bill 2016

Meabhrán Mínitheach
Explanatory Memorandum



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Background and Purpose of Bill

This Bill is designed to confer responsibility for granting parole upon an independent statutory body (supported by a small secretariat or staff).

At present the *de facto* parole system operates entirely at the discretion of the Minister for Justice under the auspices of the temporary release provisions of section 2 of the Criminal Justice Act 1960, as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003.

Currently, a parole board is established on a non-statutory basis to advise the Minister as to the suitability for temporary release/parole of such persons as the Minister refers to the board. At present the Board tends to be referred cases with prisoners who have served half their sentence or seven years, subject to certain excluded categories. Temporary release can be and frequently is granted on terms outside of the parole board's remit. The parole board makes recommendations to the Minister in respect of persons serving sentences of a duration within its remit.

This Act does not replace the temporary release provisions, but rather places the concept of parole on a clearer statutory footing under the remit of an independent expert body.

The Act is divided into three parts. Part 1 deals with preliminary and general matters. Part 2 deals with the Parole Board, its powers and compositions. Part 3 deals with parole applications, guiding principles, and the procedure.

PART 1

Preliminary and General

Part 1 provides standard provisions relating to citation, commencement, interpretation, regulations and expenses, together with a short overview of the nature of parole.

Section 1

Short title and commencement

This section sets out the short title of the Bill, which is to be the Parole Bill 2016. As it is not a Government Bill, it also provides for a specific commencement date.

Section 2

Interpretation

This is a standard provision to define the terms used in the Bill.

Section 3

Regulations

This section enables the Minister to make regulations and requires such regulations to be laid before each House of the Oireachtas.

Section 4

Expenses

Section 4(1) is a standard provision enabling the expenses of the Minister, with the consent of the Minister for Public Expenditure and Reform, to be met from moneys provided by the Oireachtas.

Section 4(2) provides that the Minister shall pay to the Board in each financial year such amount as may be sanctioned by the Minister for Finance/Public Expenditure and Reform out of moneys provided by the Oireachtas, for the purposes of expenditure by the Board in the performance of its functions.

Section 5

Nature of Parole

This section is intended to give a broad overview of how and when persons serving sentences of imprisonment may be released from custody on parole, i.e. subject to conditions, prior to the normal expiry of their sentence. It does not confer rights or impose obligations and, if there is an inconsistency between this section and any other, the other section prevails.

PART 2

The Parole Board

Section 6

Establishment

This section provides that on the commencement day of the legislation a Parole Board will be established. It establishes the Board as a statutory body to perform the functions assigned to it. It also provides that the Board will be independent in the performance of its functions.

Section 7

Functions of the Board

This section sets out the functions of the Board. The Board will:

- convene panels to:
 - consider persons for parole and, if appropriate, direct that such persons be released on parole and subject to such conditions as may be specified pursuant to parole order;
 - require, if appropriate, that persons released on parole be subject to periodic monitoring of compliance with parole conditions;
 - consider and determine, as necessary, whether conditions in parole orders should be varied and/or discharged;
 - consider and determine, as necessary, whether parole orders should be suspended or revoked;
- issue warrants for the purposes of apprehending and returning to custody persons the subject of parole orders where there are grounds justifying the suspension or revocation of the parole order;

- make periodic reports to the Minister upon the operation of its functions;
- to develop policies on how to discharge its functions;
- to maintain a register of Board decisions;
- to keep statistical and other records relating to its work;
- to provide information that is readily accessible to offenders, victims, and the general public about matters relating to release from detention on parole and the policies and operation of the Board generally.

Section 8

Membership

This section sets out the provisions in relation to membership of the Board. The Board will consist of 15 members who will be appointed by the Minister on the nomination of various representative bodies and will include a psychiatrist; a psychologist; a representative of the Irish prison service; a Garda representative; a probation or welfare officer; a nominee of the Irish Penal Reform Trust and such other persons appearing to the Minister to have knowledge and experience of the supervision or aftercare of discharged prisoners or to have made a study of the causes of delinquency or the treatment of offenders.

The Minister shall endeavour to ensure an equitable gender and ethnic balance in the composition of the Board reflective of the community at large, and not less than 4 members shall be female and not less than 4 members shall be male.

The Board will be chaired by a current or former judge of the Circuit Court or a higher court nominated by the Chief Justice.

The Board will also include four panel convenors who will be either current or retired district or circuit court judges, solicitors, or barristers appointed through a competitive selection process coordinated by the Public Appointments Service

The Minister should be satisfied a prospective member has:

- knowledge or understanding of the criminal justice system; and
- the ability to make a balanced and reasonable assessment of the risk an offender may present to the community when released from detention; and
- the ability to operate effectively with people from a range of cultures.

Section 9

Terms of Office

This section provides that a member of the Board shall hold office for a 4 year term, and members may be reappointed subject to the requirement that a member may not serve more than 2 consecutive terms.

Members shall be paid such remuneration as the Minister may determine with the consent of the Minister for Finance.

A member of the Board may resign by letter to the Minister. The Minister may appoint a person to fill a casual vacancy on the Board.

A member may be removed from the Board by the Minister if the member has become incapable of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Board of its functions.

Members shall be disqualified or shall cease to hold office if adjudged bankrupt or sentenced by a court of competent jurisdiction to a term of imprisonment.

Section 10

Chairperson

This section relates to the Chairperson of the Board. The primary function of the chairperson is to ensure that the Board carries out its functions in an efficient and effective manner, but his or her functions shall also include allocating members, including panel convenors to undertake reviews or hearings. In so doing, the Chairperson shall endeavour to ensure the diverse skills and experiences of the different members of the Board are appropriately represented on any panel.

The chairperson may sit as a member, including as a panel convenor, at any panel review or hearing.

In the case of the absence or inability to act of the chairperson, the other members of the Board present at that meeting shall elect one of their number to act as chairperson of that meeting.

Section 11

Panel Convenors

This section defines the role of panel convenors, of which there are four on the Board.

The functions of a panel convenor at a hearing or review are:

- to preside at the hearing; and
- to determine any matters of procedure that may arise during or in relation to the hearing; and
- to sign the decision of the panel at that hearing.

Panel convenors are also responsible for convening further reviews or hearings for the purposes of such matters as monitoring compliance with and, variation, suspension or revocation of, a parole order. Panel convenors are also responsible for supervising preparation for a review or hearing.

Panel convenors are required to be persons who have held office as a District or Circuit Court judge or a barrister or solicitor with 9 years' experience. These qualifications are considered prudent to ensure that fair procedures are appropriately upheld. Nevertheless, the chairperson may appoint any member as an acting panel convenor in respect of a particular hearing.

The chairperson may act as a panel convenor for the purposes of a sitting; and for that purpose the chairperson has all the functions and powers of a panel convenor.

Section 12

Staff

This section sets out the details in relation to staffing for the Board. The Board will not directly employ staff; a minimum of 5 staff will be assigned or seconded to the Board from the Department of Justice, with the consent of the Board and the Minister for Public Expenditure and Reform. Alternatively, the Minister for Public Expenditure and Reform may assign or second other staff to the Board, with its consent.

Provision is made to enable the Board to perform its functions, subject to certain reserved functions, through or by any member of staff of the Board.

Section 13

Parole Panels

This section provides that the Board shall sit as panels for the purposes of discharging its duties and functions under Part III of this Act. A decision by a panel under Part III constitutes a decision of the Board. Panel decisions shall be determined by a majority of the votes of the members at a review or hearing. The section further provides that a decision of the Board on the grant or refusal of parole, or on the variation or revocation of a parole order, must be in writing and include reasons for the decision.

Section 14

Powers of Parole Panels

This section provides that a panel shall conduct reviews or hearings for the purposes of discharging specified functions under Part III of the Act. Panels shall ordinarily discharge their functions by conducting a review, save where provided, but shall also have a discretion to conduct a hearing in respect of any matter.

A parole panel may schedule an interview with any person being considered for parole.

Panels may commission reports or procure expert evidence for reviews/hearings, including from the Governor, the Irish Prison service, the probation service, An Garda Síochána, or a psychologist or psychiatrist. Reports may concern the following matters: i) the conduct of the parole candidate to date; ii) the risk of a parole candidate re-offending; iii) the risk of a parole candidate failing to comply with any conditions attaching to a parole order; iv) the likelihood of a parole candidate presenting other serious risk to the community; v) the likelihood that parole may accelerate the parole candidate's reintegration into society or improve his or her prospects of obtaining employment; vi) such other matter as a panel deems necessary to consider a person for parole. The reasonable costs of any such reports shall be paid by the Board.

A parole panel shall have the power to determine the venue and time at which any review or hearing may take place and may take into account such security and public safety factors as it deems fit.

A parole panel may conduct a hearing as it thinks appropriate and shall have powers to determine who may attend; who may speak; to impose limits on what a person may talk about and for how long; to require any person to leave the hearing, either temporarily or for the remainder of the hearing; to adjourn the hearing.

Persons can be directed in writing to appear or produce evidence to a parole panel and failure to comply with a direction will constitute an offence punishable by a fine of €1,500 or 6 months imprisonment. The reasonable expenses of witnesses directed to attend before a parole panel shall be paid by the Board.

The Board may receive written submissions from any victim of the person whose parole is being considered and, if considered necessary, allow any such victim to appear and make oral submissions at a hearing for the purpose of assisting the Board to reach a decision; and allow for the representation of any such victim by solicitor and/or counsel.

A panel may make interim orders in the discharge of its functions where necessary.

Various documents produced for hearings and reviews will be privileged and members of the Board shall enjoy immunity unless shown to be acting in bad faith.

Section 15

Reviews

A review involves a documentary consideration of such information, documents, memoranda of interview, physical evidence and written submissions as the panel shall think fit, but shall not involve oral testimony or oral representations.

A decision by a panel conducting a review shall be in writing and shall include reasons, and a copy shall be provided to the parole candidate to whom it relates, the Commissioner of An Garda Síochána, the Irish Prison Service and the Minister.

Any parole candidate dissatisfied with the decision of a review shall be entitled to a hearing, if requested in writing within 14 days of the communication of the decision of a review.

Where the decision by a panel is to decline to make a parole order in respect of a person, the decision shall specify a date at which the person will be next considered for parole, not later than 2 years from the date of the decision so declining parole.

Section 16

Hearings

A hearing shall be run in such manner as the panel deems fit and may involve oral evidence. A decision by a panel conducting a hearing shall be in writing and shall include reasons and a copy shall be provided to the parole candidate to whom it relates, the Commissioner of An Garda Síochána, the Irish Prison Service and the Minister.

For the purposes of a hearing, a person whose parole is being considered is entitled to appear and make oral submissions to a panel; and attend while any other person is making submissions, provided that the person whose parole is being considered may not be present at the hearing when any victim is present unless the victim, the person whose parole is being considered, and the Board agree. A person is also entitled to be represented by a solicitor and, with the leave of the panel, by counsel and to present a person to speak on behalf of his/her character.

Where the decision by a panel is to decline to make a parole order in respect of a person, a future parole consideration date shall be schedule not less than 2 years from the date of refusal.

Section 17

Report

This section provides for periodic annual reporting to the Minister to be laid before the Oireachtas whenever the Minister may direct. The Board may also publish other reports on matters related to its activities and functions, as it considers relevant and appropriate.

PART 3

The Parole Process

Section 18

Guiding Principles

This sets out that the paramount consideration for the Board in every case is the safety of the community.

It also sets out the following guiding principles:

- obligation to take into consideration all relevant available information, including the stated reasons and recommendations of the sentencing

judge, the nature and gravity of the offence, the degree of responsibility of the person whose parole is being considered, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by prison authorities or the probation services;

- provision of relevant information to persons being considered about decisions that concern them, how they may participate in decision-making;
- provision of reasons for decisions and appropriate access to the review of decisions in order to ensure a fair and transparent parole process.
- obligation to take due account of the position of any victims affected by any decision and any victim impact statement or submissions made by or on behalf of victims.

Section 19

Criteria for Parole

This section provides that the Board may grant parole to a person if in its opinion

- the person will not present an undue risk to society during the unexpired portion of the person's sentence; and
- the release of the person will facilitate the reintegration of the prisoner into society as a law-abiding person.

This section also addresses certain factors which the Board may have regard to in forming this opinion, which corresponds in substantial part with s.2 of Criminal Justice Act 1960 as amended by the Criminal Justice (Temporary Release Of Prisoners) Act 2003. The Board may have regard to the following factors:

- the nature and gravity of the offence to which the sentence of imprisonment being served by the person relates;
- the sentence of imprisonment concerned and any recommendations of the court that imposed that sentence in relation thereto;
- the period of the sentence of imprisonment served by the person;
- the potential threat to the safety and security of members of the public (including the victim of the offence to which the sentence of imprisonment being served by the person relates) should the person be released from prison;
- any offence of which the person was convicted before being convicted of the offence to which the sentence of imprisonment being served by him relates;
- the risk of the person failing to return to prison upon the expiration of any period of temporary release;
- the conduct of the person while in custody, while previously the subject of a parole order, or during a period of temporary release pursuant to the Criminal Justice (Temporary Release of Prisoners) Act 2003;
- any report of, or recommendation made by the Prison governor, the Garda Síochána, a probation and welfare officer, or any other person whom the Board considers would be of assistance in enabling it to make a decision as to whether to make a parole order under section (22) that relates to the person concerned;
- the risk of the person committing an offence whilst on parole;

- the risk of the person failing to comply with any conditions attaching to his parole, and
- the likelihood that any period of parole might accelerate the person's reintegration into society or improve his prospects of obtaining employment.

Section 20

Eligibility

This section provides that persons serving sentence of more than eight years shall be eligible for a parole having served $\frac{1}{2}$ of the sentence or after 7 years, whichever is lesser. A person serving a life sentence shall not be eligible for parole until that person has served a minimum period of eight years.

Where concurrent sentences have been imposed eligibility will be assessed by reference to the longest sentence. Where consecutive sentences have been imposed on a person eligibility will arise when a person has served one-half of the aggregate such sentences or ten years, whichever is the lesser period.

When imposing sentence upon a person, a sentencing judge may impose a specified period during which that person shall not be eligible for parole.

Persons convicted of certain offences are excluded from consideration for parole, such as an offence under section 3 of the Criminal Justice Act 1990 until the expiry of any minimum period specified under section 4 of the Criminal Justice Act 1990.

Section 21

Consideration for Parole

This section provides that the board must consider an eligible person for parole and schedule a review for that purpose within a 3-month period prior their eligibility date.

The board may make a parole order subject to such conditions if it deems appropriate. An offender has no entitlement to be released on parole.

The Board may make an order under subsection (2) only if it is satisfied on reasonable grounds that:

- the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons before the expiration according to law of the sentence the offender is serving; and
- the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

Section 22

Parole Orders

This section provides that the parole orders shall have effect until the expiry of the sentence and may be subject to such other conditions as may be specified, having regard to the principles and criteria for parole set down in this Act.

A parole order may be subject, inter alia, to the following conditions:

- (a) that the person must reside at a specified place;
- (b) that the person not associate with specified persons;
- (c) that the person be subject to monitoring;
- (d) that the person not engage in specified employment;

- (e) that the person not be frequent certain locations;
- (f) that the person not communicate with specified persons, and
- (g) that the person not be permitted to travel outside the jurisdiction.

Section 23

Monitoring Compliance

This section provides for monitoring of release conditions in a parole order. The Board may commission progress reports or require a person to attend a hearing, but that these powers may not be exercised more frequently than at 3-monthly intervals.

Section 24

Variation of Parole Order

This section provides that the Board may vary or discharge conditions of a parole order of its own motion or on the application of the Minister, an Garda Síochána or the person the subject of the parole order.

Before making such an order, the Board may seek information from anyone it considers may have an interest in the application. Such applications may be determined by way of review unless the person the subject of the order requests to appear or the Board wishes to hear from any person orally.

If a condition is varied, the variation takes effect from the date specified and notice must be given to the person the subject of the order, the Minister, an Garda Síochána and if practicable, any victim.

Section 25

Revocation of Parole Order

This section provides that the Board may of its own motion or on the application of the Minister or a Garda Chief Superintendent suspend or revoke a parole order if satisfied the person the subject of an order poses an undue risk or has breached his or her release conditions and the Board is satisfied revocation or suspension is appropriate.

A person shall be entitled to a hearing before a parole panel where it is proposed to revoke or suspend the parole order.

The Board shall have the power to make interim orders suspending a parole order with immediate effect and to issue a warrant recommitting the person to custody pending a review or hearing. Where an interim suspension order is made, the Board shall strive to schedule a hearing within 35 days.

If a person is sentenced to imprisonment – unless the entire sentence so imposed is suspended – the parole order shall stand revoked.

If person's parole is revoked they shall be liable to serve the remainder of their sentence, in accordance with the Prison Rules. If the person is serving a life sentence, they shall not be considered again for parole for a further period of two years.

Where the Board revokes a parole order the Board may by warrant, signed by the chairperson, authorise a member of An Garda Síochána to apprehend the prisoner and return the prisoner to prison.

Section 26

Warrants

This section provides for the chairperson to sign warrants authorising An Garda Síochána to apprehend a person released on parole if the Board has reasonable cause to suspect there are grounds justifying the suspension or revocation of a parole order.

These powers may be exercised without holding a review or hearing.

If urgency requires, the powers can be exercised by the Chairperson acting alone.

If a prisoner is returned to prison after the execution of a warrant against that prisoner, the Board shall, within 21 days, schedule a hearing and afford the person an opportunity to be heard.

Section 27

Preparation for Hearings

This section provides for certain preparation to be undertaken for reviews and hearings. The Board is required to notify the person being considered, the Minister, the Commissioner of An Garda Síochána and the governor of the relevant prison and the victim.

When notifying victims that a review or hearing is pending the Board shall explain the procedures and how the victim may participate.

The Minister is required to provide certain relevant information to the Board 5 weeks in advance of the review or hearing, and the Board shall endeavour to make information available to the person whose parole is being considered 2 weeks in advance of the review or hearing. Any person notified under this section shall also be entitled to make submissions.

The Board shall ensure that no information is given to the person whose parole is being considered that discloses the address or contact details of any victim. The Board may also in exceptional circumstances restrict a person's access to material if it may prejudice their mental or physical health, but in such cases it may be considered by their legal representatives.

Section 28

Amendment of Defamation Act 2009

This section amends section 17 of the Defamation Act 2009 to confer absolute privilege on the following statements that were:

- made in a document of the Parole Board or a document of its members connected with the Parole Board or its functions, wherever published;
- made in a report of or commissioned by the Parole Board, wherever published;
- made in any form at meetings or reviews or hearings of the Parole Board by its members or officials and such statements wherever published subsequently.

Deputy Jim O'Callaghan,

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