

Criminal Justice (Amendment) Bill 2021

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Abstract

The [Criminal Justice \(Amendment\) Bill 2021](#) provides for a number of amendments to legislation in order to address the ruling of the Supreme Court in *Wayne Ellis v The Minister for Justice*. The amendments set out in the Bill repeal provisions relating to mandatory minimum sentences that apply where an offender commits a second or subsequent offence under the relevant legislation.



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Executive Summary

- The Criminal Justice (Amendment) Bill 2021 ('the Bill') provides for a number of amendments to legislation in order to address the ruling of the Supreme Court in *Wayne Ellis v The Minister for Justice*.
- In that case, the Supreme Court held that while the Oireachtas can impose mandatory penalties for offences, it can only do so where those penalties apply to all persons equally. Specifically, the Oireachtas cannot create a mandatory penalty which only applies to a particular class of persons, such as a person who has previously committed a particular offence/s.
- The amendments set out in the Bill repeal provisions relating to mandatory minimum sentences that apply where an offender commits a second or subsequent offence under the relevant legislation.
- Sections 1, 2 and 3 of the Bill amend provisions in three 19th Century Acts that provide for mandatory penalties for second or subsequent offences.
- Sections 4, 5, 6 and 7 of the Bill amend provisions relating to mandatory sentences for second and subsequent firearms and misuse of drugs offences.
- Sections 8 and 9 of the Bill provide for consequential amendments to the [Criminal Justice Act 2007](#) and the [Parole Act 2019](#) arising from the deletion of provisions set out in the Bill.

Table of Provisions

Section	Title	Effect
1.	Amendment of section 49 of the <i>Dublin Police Magistrates Act 1808</i>	This amendment removes a mandatory penalty for second and subsequent offences of concealing stolen goods.
2.	Amendment of section 40 of <i>Illicit Distillation (Ireland) Act 1831</i>	This amendment removes mandatory penalties for second and subsequent offences under the Act.
3.	Amendment of section 32 of <i>Refreshment Houses (Ireland) Act 1860</i>	This amendment removes mandatory penalties for second and subsequent offences under the Act.
4.	Amendment of section 15 of <i>Firearms Act 1925</i>	<p>Section 15 of the <i>Firearms Act 1925</i> provides for an offence of possession of firearms with intent to endanger life.</p> <p>This amendment removes the mandatory minimum 10-year sentence for a second or subsequent such offence.</p>
5.	Amendment of <i>Firearms Act 1964</i>	<p>The <i>Firearms Act 1964</i> provides for mandatory minimum sentences for second and subsequent convictions of several offences under the following sections:</p> <ul style="list-style-type: none"> • Section 26 – Possession of a firearm while taking a vehicle without authority (5 years) • Section 27 – Using a firearm to assist or aid the escape of a person from custody (10 years) • Section 27A - Possession of a firearm or ammunition in suspicious circumstances (5 years) • Section 27B – Carrying a firearm with criminal intent (5 years) <p>This amendment removes these mandatory minimum sentences for second and subsequent offences.</p>
6.	Amendment of section 27 of <i>Misuse of Drugs Act 1977</i>	Section 27 of the <i>Misuse of Drugs Act 1977</i> sets out the penalties for offences under the

		<p>Act. It contains a mandatory minimum sentence of 10 years for a second or subsequent offence under sections 15A (possession of drugs worth more than €13,000) or 15B (Importation of controlled drugs in excess of certain value).</p> <p>This amendment removes that mandatory minimum sentence.</p>
7.	Amendment of section 12A of <i>Firearms and Offensive Weapons Act 1990</i>	<p>Section 12A of the <i>Firearms and Offensive Weapons Act 1990</i> provides for an offence of shortening the barrel of a shot-gun or rifle.</p> <p>This amendment removes the mandatory minimum sentence of 5 years for a second or subsequent such offence.</p>
8.	Amendment of section 25 of <i>Criminal Justice Act 2007</i>	A consequential amendment resulting from the deletion of provisions in other Acts by this Bill.
9.	Amendment of section 24 of <i>Parole Act 2019</i>	A consequential amendment resulting from the amendment of the <i>Misuse of Drugs Act 1977</i> .
10.	Short title and commencement	A standard provision setting out the short title and commencement information for the Act. The Act will come into operation by order of the Minister for Justice and different provisions may come into effect on different days.

Source: L&RS Analysis of the Bill

Introduction

On 22 May 2020, in response to the Supreme Court judgment in *Wayne Ellis v The Minister for Justice*¹ (discussed below), the Government approved the drafting and publication of a General Scheme of what was then called a 'Criminal Justice (Repeal of certain provisions of the Firearms and Misuse of Drugs Acts) Bill 2020'.² Publication of the Bill was approved by Government on 8 December 2020, subject to a waiver of pre-legislative scrutiny, which was subsequently granted by the Business Committee.³

The [Criminal Justice \(Amendment\) Bill 2021](#) ('the Bill') was published by Minister for Justice Helen McEntee TD on 23 February 2021. At time of writing, Second Stage debate has not been scheduled.

The purpose of the Bill, as noted in the Explanatory Memorandum,⁴ is to:

“...[r]ectify the constitutional infirmities in legislation identified by the Supreme Court in the case of *Wayne Ellis and the Minister for Justice and Equality, Ireland and the Attorney General* in its judgment delivered on 15 May 2019.”

In that case, the Supreme Court found that while the Oireachtas can impose mandatory penalties for offences, it can only do so where those penalties apply to all persons equally. Specifically, the Oireachtas cannot create a mandatory penalty which only applies to a particular class of persons, such as a person who has previously committed a particular offence/s. The Court held that under [Article 34 of the Constitution](#), such a penalty may only be administered by the Courts.

Consequently, the purpose of the Bill is to remove any instances in legislation where such a mandatory penalty occurs.

¹ *Ellis v Minister for Justice and Equality & ors* [2019] IESC 30.

² [Criminal Justice \(Repeal of certain provisions of the Firearms and Misuse of Drugs Acts\) Bill 2020 - The Department of Justice](#).

³ [Proposed Legislation – Wednesday, 13 Jan 2021 – Parliamentary Questions \(33rd Dáil\) – Houses of the Oireachtas](#)

⁴ Available here: <https://data.oireachtas.ie/ie/oireachtas/bill/2021/25/eng/memo/b2521d-memo.pdf>

Background

This section provides background information in relation to:

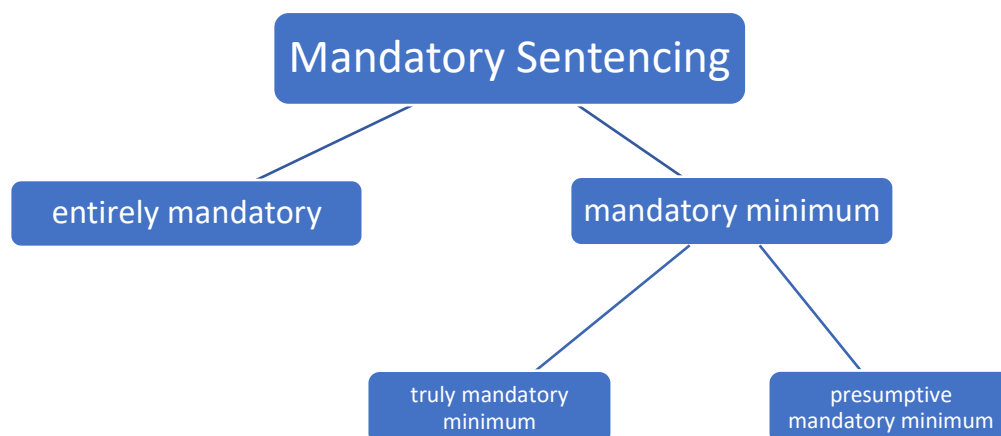
- Mandatory sentences; and
- *Ellis v The Minister for Justice*.⁵

Mandatory sentences

In Ireland, laws that create a criminal offence will usually specify a maximum penalty that a court may impose.⁶ For example, the maximum penalty for assault causing harm is 5 years imprisonment.⁷ This operates to communicate to the courts the relative gravity of the offence, whilst leaving them a wide measure of discretion to account for mitigating factors, either with respect to the circumstances of the commission of the offence, or to the personal circumstances of the convicted person. For example, only the most serious category of assault causing harm, committed by someone with little or no mitigating circumstances, would attract a sentence of 5 years imprisonment.

Mandatory sentences operate to remove such discretion from the courts, and direct that a particular sentence be imposed, no matter the particular circumstances of the offence, or of the offender. There are two forms of mandatory sentence; an entirely mandatory sentence and a mandatory minimum sentence. Mandatory minimum sentences can be further subdivided into presumptive mandatory minimum sentences and truly mandatory minimum sentences.

The graphic below illustrates the different forms of mandatory sentence.



⁵ For further background information see: Library & Research Service Note, "Mandatory Sentences: Wayne Ellis v Minister for Justice and Equality" (May 2019). Available [here](#).

⁶ Where no statute provides for a specified penalty, section 10(1) of the *Criminal Law Act 1997* provides for a maximum of 2 years imprisonment for any offence tried on indictment.

⁷ When charged on indictment. Section 3 of the *Non-Fatal Offences Against the Person Act 1997*. A more serious offence of causing serious harm is provided for in section 4 of the 1997 Act, which attracts a maximum sentence of life imprisonment.

Entirely mandatory sentences

An entirely mandatory sentence is the most absolute form of mandatory sentence; it permits for no movement of the penalty, upwards or downwards, by the judge. There are only three entirely mandatory sentences in Irish law: an entirely mandatory life sentence is prescribed for the offences of: (a) murder;⁸ (b) capital murder;⁹ and (c) treason.¹⁰

Mandatory minimum sentences

A more common form of mandatory sentence is the mandatory minimum sentence. The mandatory minimum sentence can be further subdivided into presumptive mandatory minimum sentence, and a truly mandatory minimum sentence.

A *presumptive* mandatory minimum sentence directs a court to impose, at a minimum, a specified term of imprisonment, unless the court is of the view that exceptional circumstances require a lower sentence. For example, the [Misuse of Drugs Act 1977](#), as amended, provides for a minimum sentence of 10 years imprisonment on conviction of possession with intent to supply an amount of drugs valued at over €13,000. However, this minimum does not apply where the judge “determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, it would be unjust in all the circumstances to do so.”¹¹ Similar provision is made in respect of a number of serious firearms offences under the [Firearms Act 1964](#).

In the case of both categories of offence, the presumptive mandatory minimum applies only in respect of a first offence and is converted to a *truly* mandatory minimum sentence where a person is before the court for a second such offence. That is, on a second offence, a judge has no residual discretion to impose a term of imprisonment less than the statutory minimum. It is in effect a “two strikes and you’re out” provision.¹²

⁸ [Section 2 of the Criminal Justice Act 1990](#).

⁹ [Section 3 of the Criminal Justice Act 1990](#).

¹⁰ [Section 1 of the Treason Act 1939](#), as amended. There have been no successful prosecutions for this offence in the history of the State.

¹¹ [Section 27\(3D\)\(a\) of the Misuse of Drugs Act 1977](#). There are figures to suggest that the presumptive minimum is more honoured in the breach than in the observance. The Irish Independent reported in 2012 that: “since 2007, 889 people have been convicted of the sale or supply of more than €13,000 worth of drugs, but only 155 -- or 17pc -- received a 10-year term.” It is not made clear how many of this 17 per cent were repeat offenders. Irish Independent, [‘Just one in five drug dealers gets “mandatory” term’](#) (February 2, 2012).

¹² In the 1990s a number of US states introduced what are often referred to as “three strikes” laws. These provide that where an offender has committed a third offence, the punishment received by the offender for the third offence is significantly higher than it would be for a first-time offence, in many cases being a mandatory life sentence. This contrasts with the considerably less harsh position under the *Firearms Act 1964*, which provides for mandatory minimum sentences of 5 years for a repeat offender for certain offences.

Challenges to mandatory sentences

Mandatory sentences have been challenged in the courts on the ground that they interfere with the judiciary's function to administer justice, and hence breach the separation of powers, which the Supreme Court has described as "a high constitutional value."¹³

The separation of powers

The separation of powers is a constitutional doctrine that provides for the division of the organs of government; between the executive, the judiciary, and the legislature. The doctrine requires each organ to carry out its functions independently, and free from the interference of the others. The separation of powers has been a fundamental value of liberal government since the time of the French Revolution. It ensures that there is a system of checks and balances maintaining the stability and good governance of the State.

Source: Library & Research Service Note, "Mandatory Sentences: Wayne Ellis v Minister for Justice and Equality" (May 2019), at p. 4

The mandatory life sentence for murder was challenged on these grounds in *Lynch & Whelan v Minister for Justice*,¹⁴ but the Supreme Court ruled in favour of the State. The Supreme Court held that mandatory sentences are not unconstitutional provided the sentence bears a "rational relationship" to the nature of the offence (i.e. it is proportionate) and applies equally to all persons.¹⁵ In discussing the proportionality argument, the Supreme Court noted that while murder can be committed in a "myriad of circumstances" with varying degrees of culpability and blameworthiness, the commission of the offence under any circumstances is so grave and repugnant that a life sentence will always be proportionate:

"In committing the crime of murder the perpetrator deprives the victim, finally and irrevocably, of that most fundamental of rights, the right 'to be', and at the same time extinguishes the enjoyment of all other rights inherent in that person as a human being. By its very nature it has been regarded as the ultimate crime against society as a whole. It is also a crime which may have exceptional irrevocable consequences of a devastating nature for the family of the victim."¹⁶

While the authors are not aware of any previous constitutional challenge to mandatory minimum sentencing, as opposed to entirely mandatory sentences, it is worth noting that their constitutionality has been questioned by leading commentators. O'Malley, a prominent academic in

¹³ *T.D. and Others v Minister for Education* [2001] IESC 101, [2001] 4 IR 259 per Denham J (as she then was).

¹⁴ *Lynch & Whelan v Minister for Justice Equality and Law Reform* [2010] IESC 34.

¹⁵ [2010] IESC 34.

¹⁶ [2010] IESC 34.

the field, discusses the mandatory minimum sentence under the *Misuse of Drugs Act 1977*, as amended, in the following terms:

“The constitutionality of the mandatory minimum 10-year sentence for repeat offenders remains an open question. Due deference must obviously be paid to the legislative assessment of the gravity of repeat drug-dealing offences. Yet a mandatory 10-year term under this “two-strikes” law is remarkably severe for a non-violent offence. It means, for example, that a person who was once convicted of possessing for sale or supply drugs with a street value only marginally in excess of €13,000 and is again convicted several years later of a s. 15A offence involving drugs with a similar street value must, in respect of that second offence, be given a prison term of at least 10 years...Even assuming that a mandatory penalty is constitutionally vulnerable where there is “no rational relationship between the penalty and the requirements of justice” in the particular case, that test could possibly be satisfied in a constitutional challenge to the mandatory minimum sentences for drug and firearms offences...”¹⁷

The Law Reform Commission (‘the Commission’) has recommended that the mandatory minimum sentencing regimes applicable to both drugs and firearms be repealed in their entirety.¹⁸ In relation to drugs offences, the Commission noted that the offenders most likely to be the subject of the mandatory minimum are so-called “drug mules”, whose involvement in the drugs trade is secured through exploitation and coercion, and for whom the sentencing regime is unlikely to have any real deterrent effect.¹⁹ The Commission also suggested that it is unjust for drugs offenders to be subject to the same punishment irrespective of their level of moral culpability.²⁰ The Commission similarly took the view that the mandatory sentencing regime under the *Firearms Act 1964* is unjust having regard to relative culpability of offenders and does not meet the aim of deterrence.²¹ In place of this regime of sentencing, the Commission recommends that a structured, guidance-based sentencing system, operated by a Judicial Council, be enacted.²²

It is against this background that the Supreme Court gave judgment in *Wayne Ellis v Minister for Justice* in May 2019.

¹⁷ O'Malley, *Sentencing Law and Practice* (3rd ed. Round Hall, 2016) p. 467.

¹⁸ Law Reform Commission, *Report on Mandatory Sentences* (LRC 108 – 2013) p. 183.

¹⁹ *Ibid*, p. 175.

²⁰ *Ibid*.

²¹ *Ibid*, p. 177.

²² *Ibid*, p. 183. The [Judicial Council Act 2019](#) gives effect to this recommendation.

Ellis v Minister for Justice

In *Ellis*, the Supreme Court considered the constitutionality of [section 27A\(8\) of the Firearms Act 1964](#), which provides for a “two strikes and you’re out” mandatory minimum sentence of the kind discussed above. The Court considered the respective roles of the Oireachtas and the courts in determining appropriate sentence for repeat offenders, and its implications for the separation of powers. The main judgment was delivered by Ms Justice Finlay Geoghegan,²³ and a concurring opinion was delivered by Mr Justice Charleton.²⁴

The background to the case is set out in detail in the judgment of Ms Justice Finlay Geoghegan.²⁵ Mr Ellis was charged with numerous offences arising out of an incident at Knocklyon Shopping Centre, including an offence of possession of a sawn off shotgun contrary to section 27A(1) of the 1964 Act. Mr Ellis had a previous conviction for carrying a firearm with criminal intent, under [section 27B of the 1964 Act](#).

Having pleaded guilty to this offence, Mr Ellis was sentenced in the Circuit Court to a five year sentence, which was fully suspended. However, the Circuit Court judge acted in error in so doing, as she was not aware that the mandatory nature of the sentence to be imposed on a repeat offender under section 27A(8) precluded her from suspending the sentence.

While the Circuit Court judge was of the view that the appellant was undertaking credible measures to reform himself, and was entitled to a degree of leniency, this was not an avenue open to her. The Director of Public Prosecutions appealed the sentence for undue leniency, noting the error of trial judge.

The appellant commenced separate proceedings to challenge the constitutionality of section 27A(8). He argued that the effect of the provisions was to limit the discretion of the sentencing judge in a manner inconsistent with the Constitution, and in breach of the doctrine of separation of powers. The constitutionality of section 27A(8) of the 1964 Act was upheld in the High Court by Mr Justice Twomey²⁶ and in the Court of Appeal by Mr Justice Birmingham.²⁷

The Supreme Court considered the fundamental issue before the court to be whether:

“... it is consistent with the Constitution for the Oireachtas to legislate for a fixed or minimum mandatory sentence or penalty which does not apply to all persons convicted of the offence, but only to a limited class of such offenders, determined by reference to a fact which is either one characteristic of the offender, namely that he has one or more prior relevant conviction, or is one of the circumstances in which the offence of conviction is considered to have been committed, namely that it is the second time or more that the offender has committed this offence or a similar relevant offence.”²⁸

²³ Available [here](#).

²⁴ Available [here](#).

²⁵ *Ellis v Minister for Justice and Equality & ors* [2019] IESC 30, at paras 3 to 17.

²⁶ *Ellis v Minister for Justice and Equality & ors*. [2016] IEHC 234.

²⁷ *Ellis v Minister for Justice and Equality & ors*. [2017] IECA 237.

²⁸ [2019] IESC 30, at para 52.

The Supreme Court examined the relevant case law and identified two principles to guide the court in considering the issue of the separation of powers in the area of sentencing:

- The first principle is that both the Courts (pursuant to Article 34 and Article 38 of the Constitution)²⁹ and the Oireachtas (pursuant to Article 15 of the Constitution)³⁰ may have a role in the determination of the sentence to be imposed on a convicted person.³¹
- The second principle is that the Oireachtas may prescribe legislation which provides for all persons convicted of a particular offence to be subject to a specific prescribed penalty, subject to the constitutional constraint of the penalty bearing a rational relationship to the requirements of justice in relation to the punishment of the offence.³²

The Supreme Court also noted that the case law indicates that:

“... the selection of the punishment to be imposed on a particular person convicted of a particular offence forms part of the administration of justice which, pursuant to Articles 34.1 and 38, is exclusively a matter for judges sitting in courts.”³³

In discussing the principles of sentencing to be applied in order to reach a just and fair sentence, the Supreme Court noted that these involve a consideration of the following factors:

1. The gravity of the offence;
2. The circumstances in which it was committed;
3. The personal situation of the accused; and
4. Mitigating factors.

The Supreme Court also highlighted the importance of evaluating previous convictions in sentencing and noted that:

“Prior convictions, or the absence thereof, always form part of the consideration of the above factors by a sentencing judge in reaching an appropriate sentence for the offence of conviction and the person convicted.”³⁴

In applying the principles set out above, the Supreme Court held that section 27A(8) of the 1964 Act breached the separation of powers, holding that:

“... it is not constitutionally permissible for the Oireachtas to determine or prescribe, by Statute a penalty to which only a limited class of persons who commit a specified offence are subject, by reason either of the circumstances in which the offence was committed, or

²⁹ Article 34.1 of the Constitution provides that “Justice shall be administered in courts established by law”. Article 38.1 provides that “No person shall be tried on any criminal charge save in due course of law”.

³⁰ Article 15.2.1 of the Constitution provides that “The sole and exclusive power for making laws for the State is hereby invested in the Oireachtas...”.

³¹ [2019] IESC 30, at para 45.

³² [2019] IESC 30, at paras 46 and 47.

³³ [2019] IESC 30, at para 48.

³⁴ [2019] IESC 30, at para 55.

the personal circumstances of the convicted person. This is because the law no longer simply determines the applicable penalty for all who are convicted of the crime and the selection of the appropriate sentence in accordance with law for the particular offence committed by the individual offender forms part of the administration of justice and is pursuant to Article 34.1 exclusively the domain of judges sitting in courts. That is what the Oireachtas purported to do by enacting s. 27A(8) of the 1964 Act, as amended.”³⁵

In effect, the Supreme Court held that while the Oireachtas can provide for a mandatory penalty for an offence, it can only do so where that penalty applies equally to all offenders. In directing a court as to how to assess the weight of previous convictions in determining sentence (i.e. that a previous conviction for the same or similar offence should automatically bring it into a higher category of sentence), the Oireachtas had overstepped into the judicial function of administering justice in individual cases. For the Supreme Court, it is a function of the judiciary, and not the Oireachtas, to determine the relative weight to be attached to previous convictions in determining sentence.

Thus, the Supreme Court did not view the differing application of the mandatory minimum as constitutionally deficient on equality grounds, but rather on the basis of how that differing application interferes with a court’s function in determining sentences in an individual case, something which the Court sees as integral to the judicial function under Article 34.1 of the Constitution.

This is perhaps the key difference between the approach of the High Court and Court of Appeal, and of the Supreme Court. The lower courts considered the “differing application” argument through the lens of the constitutional guarantee of equality in Article 40.1 and rejected it on the basis that it was not an arbitrary or unreasonable distinction for the Oireachtas to draw. However, the Supreme Court considered the “differing application” argument under a different standard, namely Article 34.1. The Supreme Court was persuaded that the differing application of the mandatory sentence interfered with a court’s function of administering justice in individual cases, as required by Article 34.1.

³⁵ [2019] IESC 30, at para 60.

Principal Provisions

This section of the Digest examines the main provisions of the Bill. The Bill comprises 10 sections. Section 10 of the Bill relates to the short title and commencement of the Bill. Section 10 is a standard provision and for that reason it is not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

Amendment of section 49 of the *Dublin Police Magistrates Act 1808*

Section 1 of the Bill provides for an amendment to [section 49 of the *Dublin Police Magistrates Act 1808*](#) (the 1808 Act). Section 49 of the 1808 Act provides for the penalty in relation to an offence of concealing stolen goods. Section 1(a) of the Bill proposes to amend section 49 by removing the mandatory amount to be paid as a fine for subsequent offences and replacing it with a maximum penalty that can be imposed. Section 1(b) of the Bill proposes to delete the text from section 49 that requires the imprisonment of an offender who is unable to pay the fine.

Amendment of section 40 of the *Illicit Distillation (Ireland) Act 1831*

Section 2 of the Bill provides for an amendment to [section 40 of the *Illicit Distillation \(Ireland\) Act 1831*](#) (the 1831 Act). Section 40 of the 1831 Act provides for the penalties to be applied in relation to people found guilty of a subsequent offence under the 1831 Act. Section 2(a) of the Bill proposes to amend section 40 by removing the requirement that a fine for a subsequent offence be at least twice the amount of the fine for the first offence and replacing it with a maximum penalty that can be imposed. Section 2(b) of the Bill provides for a consequential textual amendment to section 40. Sections 2(c) and 2(d) of the Bill propose to delete the text from section 40 that requires the imprisonment of an offender who has failed to pay the fine.

Amendment of section 32 of the *Refreshment Houses (Ireland) Act 1860*

Section 3 of the Bill provides for an amendment to [section 32 of the *Refreshment Houses \(Ireland\) Act 1860*](#) (the 1860 Act). Section 32 of the 1860 Act provides for the penalties to be applied in relation to people found guilty of offences under the 1860 Act. Section 3 of the Bill proposes to amend section 32 by removing the mandatory amount to be paid as a fine for a third subsequent offence and replacing it with a maximum penalty that can be imposed.

Amendment of section 15 of the *Firearms Act 1925*

Section 4 of the Bill provides for an amendment to [section 15 of the *Firearms Act 1925*](#) (the 1925 Act). Section 15 of the 1925 Act provides for offence of possession of firearms with intent to endanger life. Section 4 of the Bill proposes to amend section 15 by deleting subsections (7) and (8) which relate to mandatory minimum sentences for second or subsequent offences under section 15 of the 1925 Act.

Amendment of the *Firearms Act 1964*

Section 5 of the Bill provides for amendments to the [Firearms Act 1964](#) (the 1964 Act).

Section 5(a) of the Bill proposes to amend [section 26](#) of the 1964 Act. Section 26 of the 1964 Act provides for the offence of possession of a firearm while taking a vehicle without authority. Section 5(a) of the Bill proposes to amend section 26 by deleting subsections (7) and (8) which relate to mandatory minimum sentences for second or subsequent offences under section 26 of the 1964 Act.

Section 5(b) of the Bill proposes to amend [section 27](#) of the 1964 Act. Section 27 of the 1964 Act provides for offences relating to the use of firearms to assist or aid escape. Section 5(b) of the Bill proposes to amend section 27 by deleting subsections (7) and (8) which relate to mandatory minimum sentences for second or subsequent offences under section 27 of the 1964 Act.

Section 5(c) of the Bill proposes to amend [section 27A](#) of the 1964 Act. Section 27A of the 1964 Act provides for the offence of possession of a firearm or ammunition in suspicious circumstances. Section 5(c) of the Bill proposes to amend section 27A by deleting subsection (7) which relates to mandatory minimum sentences for second or subsequent offences under section 27A of the 1964 Act. It should be noted subsection (8) of section 27A, which is the substantial provision in this section relating to mandatory minimum sentences, was struck down as unconstitutional by the Supreme Court in *Ellis v Minister for Justice* (see above).

Section 5(d) of the Bill proposes to amend [section 27B](#) of the 1964 Act. Section 27B of the 1964 Act provides for an offence of carrying a firearm with criminal intent. Section 5(d) of the Bill proposes to amend section 27B by deleting subsections (7) and (8) which relate to mandatory minimum sentences for second or subsequent offences under section 27B of the 1964 Act.

Amendment of section 27 of the *Misuse of Drugs Act 1977*

Section 6 of the Bill proposes to amend [section 27 of the Misuse of Drugs Act 1977](#) (the 1977 Act). Section 27 of the 1977 Act provides for penalties in relation to offences under the 1977 Act. Section 6 of the Bill proposes to amend section 27 by deleting subsections (3E) and (3F) which relate to mandatory minimum sentences for second or subsequent offences under [section 15A](#) and [section 15B](#) of the 1977 Act.

Amendment of section 12A of the *Firearms and Offensive Weapons Act 1990*

Section 7 of the Bill proposes to amend [section 12A of the Firearms and Offensive Weapons Act 1990](#) (the 1990 Act). Section 12A of the 1990 Act provides for offences relating to the shortening of the barrel of a shotgun or rifle. Section 6 of the Bill proposes to amend section 12A by deleting subsections (12) and (13) which relate to mandatory minimum sentences for second or subsequent offences under section 12A of the 1990 Act.

Amendment of section 25 of the *Criminal Justice Act 2007*

Section 8 of the Bill proposes to amend [section 25 of the *Criminal Justice Act 2007*](#) (the 2007 Act). Section 25 of the 2007 Act provides for sentencing relating to the commission of a subsequent offence as specified in [Schedule 2](#) of the 2007 Act, within a specified time period. Section 8 of the Bill proposes a consequential textual amendment to section 25(2), deleting the references to:

- Section 15(8) of the 1925 Act;
- Sections 26(8), 27(8), 27A(8) and 27B(8) of the 1964 Act;
- Section 12A of the 1990 Act; and
- Section 27(3F) of the 1977 Act.

Amendment of section 24 of the *Parole Act 2019*

Section 9 of the Bill proposes to amend [section 24 of the *Parole Act 2019*](#) (the 2019 Act). Section 24 of the 2019 Act provides for eligibility in relation to parole.³⁶ Section 9 of the Bill proposes a consequential textual amendment to section 24(12), deleting the reference to section 27(3F) of the 1977 Act.

³⁶ Parole refers to the system of early release of a prisoner under the supervision of the Probation Service, in relation to longer-term prisoners. For more information see [Being released from prison \(citizensinformation.ie\)](https://citizensinformation.ie).

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