In order to understand the Parole Process in England and Wales in an international context, the authors have undertaken a short survey of arrangements across a range of jurisdictions The table which follows is not a comprehensive comparison of international arrangements: such an undertaking would have been beyond the scope of this paper. However it is intended to provides some indication of the range of approached taken in respect of the assessment of offenders with mental health problems when their early release is being considered. We could not include the USA as these arrangements are state determined for the great majority of offenders: federal arrangements apply in a minority of cases only, and to detail the varieties of state arrangements would have expanded the paper unreasonably.

The authors are indebted to a range of professional contacts around the world for the information provided below.

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Country**  | **England & Wales**  | **Scotland** | **Ireland** | **Netherlands** | **Canada**  | **Australia** | **Sweden** | **Norway**  | **Germany**  |
| **National arrangements or state by state jurisdiction?**  | National  | National  | National  | National  | National for ‘federal’ prisoners - all sentences > 2yrs’; also most ‘regional’ prisoners serving < 2 yrs  | Information from Victoria only  | National | National | Over-arching national law with additional state operational powers  |
| **Assessed for early release on licence** | Yes in specific circumstances: part way through extended sentence; all indeterminate and life sentences, and recall from licence after failed early release principally | Yes – for: recalled short sentence sex offenders; if > 4 yrs fixed sentence; if extended sentence aggregate term > 4 yrs, or custodial term > 4 yrs or if recalled; All life sentences including any with Lifelong Restriction Order all considered by Board; | Yes – for life sentence prisoners only at present. Such prisoners must have served at least 12 years before consideration for parole.Other prisoners may be released early dependent on conduct without parole board involvement  | Yes – different arrangements depending on whether sentence more or less than one year, and not if a sentence is already partly conditional. | Yes  | Yes subject to the prisoner applying and dependent on sentence length: not if sentence less than 1 year | Fixed term sentences – subject to automatic release at 2/3rds of sentence, which may be deferred until end of sentence if custodial behaviour problematic. Life sentences may be commuted dependent on progress.  | All offenders must serve half sentence in custody, minimum 60 days. Parole possible between half and 2/3s sentence unless further offending anticipated: then entire sentence may be served in custody. Local custodial staff input is crucial to decision making and triggering review.  | Yes – by specific Chamber of Executions: 3 judicia; members for life sentences and release form psychiatric hospital; one member otherwise  |
| **Panel based assessments with live evidence?** | Yes where required; most decisions paper based  | Consideration can be paper-based, with a live hearing being fixed where required by fairness. All life sentence, OLR, and extended sentence prisoners in the extended part of their sentence prisoners have live hearings | System in transition (Nov 2021) with interview with prisoner conducted by 2 parole board members + member of PB staff; then wider PB discussion before making decision.  | For unconditional sentences of more than one year a decision on conditional release (or not) is made by the Public Prosecution. A request for a marginal review can be made before the district court. . Appeal will hear live evidence with challenge on behalf of prisoner  | Yes in approximately 40% of reviews where the law/policy requires or where Board Members have ordered a panel review.60% of reviews are completed by in-office reviews (paper based) | Yes – from the prisoner and from the assigned community corrections officer No live evidence from treating mental health professionals: report may be submitted / requested  | Judicial panel decision with live evidence when required  | All fixed term sentence parole reviews are admimistrative decisions, ‘Preventive detention’ order parole hearings are court hearings  | Yes if prisoner gives live evidence. Otherwise paper based  |
| **Paper based assessment only?** | Yes – mainly in recall cases  | Yes, in some cases, with the option to fix a live hearing if required by fairness. | Can be paper based on 2nd and subsequent hearings  | Public Prosecutor’s Office (PPO) decides, with reports from prison and rehabilitation office. Prisoner’s comments considered .  | Yes in approx. 60% of cases  | If the initial scoping of the papers indicates parole is unrealistic, then decision made be made at that stage  | Judicial panels not paper based  | Yes for fixed term sentences; ‘preventive detention’ cases are heard in court if prosecutor does not agree to release | possible, see above |
| **Do panels hear live witnesses?**  | Yes for a panel  | At the chair’s discretion  | Victims live evidence may be heard at a separate hearing. Prisoner also gives live evidence. No other live witnesses.  | Possible but for marginal review not probable.  | No live witnesses: the prisoner and the parole officer are present during the hearings. For Indigenous offenders, Elders may also be present | As above – the prisoner and the corrections officer only  | Yes  | Not for fixed term sentence parole decisionsLive expert evidence may be heard for ‘preventive detention’ Court hearings  | Prisoner always heard live if detained in hospital: other cases may or may not have live evidence. Other witnesses may be heard if a ‘live’ hearing, but this is rare  |
| **Evidence includes assessments by expert clinical staff?** | Yes where PB indicates this is needed on basis of initial scrutiny of papers or adjourns for additional evidence  | At the chair’s discretion | May be part of dossier as required by the Panel | Yes – both reports.  | Paper reports considered; no other live evidence or testing of evidence  | Not by treating staff  | Yes where relevant  | It may do: prison staff are obliged to give evidence, Clinical staff may give evidence if the prisoner consents to disclosure of otherwise confidential clinical material  | Mandatory requirement  |
| **Evidence includes independent expert assessments commissioned by prisoner?** | Yes on occasions  | Yes-where it is available and at the discretion of the chair | If the prisoner makes his own arrangements this would be considered | No, but provision for independent experts to provide a report based on prison & rehab reports described above.  | No  | No – as above  | The Prisoner may submit a doctor’s statement to support his case  | This is allowed but not required  | Required in higher concern cases: release from life imprisonment or from forensic hospital |
| **Legal aid available to enable representation at Parole Board Hearings?**  | Yes subject to strict rules  | Yes-subject to financial eligibility | At present no legal assistance at interview, but future arrangements include legal representation.  | Yes – prisoners are represented at an review hearing  | The offender may be assisted by a lawyer, a spouse, a parent, etc.No state funding for this representation  | No state funded legal assistance  | A public counsel will be appointed to assist the prisoner  | Not usually for fixed term hearings. ‘Preventive detention’ prisoners have legal representation.  | Yes if remaining sentence greater than 2 years or if release from psychiatric detention is being considered  |
| **Panel includes clinical staff on as needed basis?** | Yes  | yes | PB includes psychiatric and psychological members allocated to specific cases on basis of clinical need and availability  | No – PPO/court is judicial  | All Parole Board members have the powers for decision-making and receive the same training on risk-based decision making. No separate clinical function. | No: panels drawn from the full time parole board membership, judicial part time appointees and ‘community’ part time appointees from a variety of backgrounds.  | No – judicial panel  | No: either administrative or judicial decision making process  | No panel: judge / judges only  |
| **Panel includes clinical staff as part of wider pool of members?** | Yes but mostly for specific cases with mental health issues  | Recent legal changes mean no longer a requirement to have a Psychiatrist on the Board. Other members include a psychologist and senior Forensic Nursing staff. | Yes  | No – PPO/court is judicial  | Many Parole Board members have a clinical background but these are not separately identified in the membership list. | Not required to have any mental health specialists as Board members  | No – judicial panel  | No – as above  | No – see above  |
| **Decision makers or recommenders?**  | Decision re release; recommend re progress to open conditions  | Decision makers  | Recent changed from advisory to decision making body.  | Both PPO and review court are decision makers not advisors to other authority  | Board members are independent decision makers with the authority to grant, deny, etc conditional release.  | Decision makers  | Judicial panel is decision maker  | Fixed term sentences< 10 yrs regional director decides; > 10 yrs prison governor decides. Prosecutor or court decides for ‘preventive detention’ cases.  | Decision makers |
| **Victims’ views included in deliberations?**  | Yes – for sexual and violent offences with custody > 1 yr. Written or oral evidence accepted. Scope limited to describing impact of offence and requesting specific licence conditions.  | Yes – extensive arrangements to ensure awareness of hearings and support to make representations and provide notification on outcome if release is directed  | Victims may make written submissions to the board or speak with the Panel and may access legal assistance to make submissions  | Also a report is made and available in the file on the interests of the victims. The PPO as well as the review court will take notice of the interests of the victims  | Victims may present statements in person, by video or in writing, and have a right to information about the offender while that person is under the jurisdiction of the PBC.  | Any victim can comment about possible release on parole. Victims may register to request licence conditions. | Victims are informed of conditions of release but do not contribute to the release decision | Victims do not have a role in decision process and do not submit representations. They have the right to be informed of decisions.  | Victims are informed of conditions of release but do not contribute to the release decision  |

Comments

Australia – increasingly politicised in Victoria following high profile sexual homicide committed by offender on bail for prev offences of rape.

Canada – has set of ‘special conditions’ standard template, subject to case by case modification, dealing with common areas of concern: alcohol, drug testing, no victim contact, limited and recorded access to the internet, reside where directed etc. Particular attention to culturally sensitive hearings for indigenous offenders. Strong victim rights enshrined in law.

Ireland: in transition in 2021 to a more formalised system. Hearings only triggered by an application from the prisoner.