



## IPRT Briefing on the Criminal Justice (Amendment) Bill 2021

### About IPRT

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system and the progressive reform of Irish penal policy, with prison as a sanction of last resort.

We are committed to respecting the rights of everyone in the penal system, and to reducing imprisonment. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

### Introduction

IPRT has recently become aware that the [Criminal Justice \(Amendment\) Bill 2021](#) is likely to come before the Justice Committee for Third Stage consideration. The Bill seeks to implement the Supreme Court ruling in *Wayne Ellis v Minister for Justice* [2019] IESC 030, and repeal those provisions relating to mandatory minimum sentences that apply when an offender commits a second or subsequent offence under the relevant legislation.

IPRT's view is that the Bill provides an opportunity to go further than simply repealing these limited provisions, and could be amended to institute more wide-ranging penal reform. In particular, the Bill potentially provides an opportunity to progress recommendations made by both the Law Reform Commission (2013) and the Penal Policy Review Group (2014) (further detail on which is provided below).

IPRT asks that you consider tabling the following amendments when the Bill comes before the Justice Committee for consideration.

### 1. Remove the Statutory Bar on Temporary Release

Section 2 of the Criminal Justice Act 1960 (as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003) allows the Minister for Justice to grant temporary release to prisoners, and sets out the factors to be considered when deciding whether to authorise such release.

There currently exists, however, a statutory bar on temporary release for people convicted of certain drug and firearms offences. Specifically:

- Section 27(31) of the Misuse of Drugs Act 1977 provides that a person serving a sentence under s.27(3A) of that Act (i.e. a person convicted of an offence under s.15A (possession of drugs with value over 13,000) or s.15B (importation of drugs with value over 13,000)) shall not be granted temporary release during the term for which the commutation or remission of his or her punishment is prohibited by s.27(3G). The only exception to this is if there is a “grave reason of a humanitarian nature” and the release shall in those circumstances only be for “such limited duration as is justified by such reason”.
- Section 27C(4) of the Firearms Act 1964 provides that any powers to temporarily release a person serving a sentence of imprisonment shall not be exercised during a minimum term of imprisonment imposed under s.15 of the Firearms Act 1925, ss.26, 27, 27A or 27B of the Firearms Act 1964 or s.12A of the Firearms and Offensive Weapons Act 1990. Again, the only exception to this is if the release is for a “grave reason of a humanitarian nature” and any such release granted for this reason “shall be only of such limited duration as is justified by that reason”.

IPRT has long campaigned for the removal of these provisions which continue to exclude certain categories of prisoners from eligibility for temporary release (see e.g. p.23 of IPRT’s 2012 [‘Reform of Remission, Temporary Release and Parole’](#) position paper). The Strategic Review of Penal Policy further recommended in their [July 2014 report](#) that “the prohibition on temporary release for those offenders who receive the presumptive mandatory sentence for a drugs or firearms offence should be removed” (Rec 29) and that “the prohibition on temporary release for persons sentenced to the presumptive minimum sentence should be repealed” (Rec 34).

IPRT believes that the current Bill due to come before the Committee presents an opportune moment to remove this statutory bar, and asks that you consider tabling amendments to the Bill accordingly. IPRT would be happy to provide further information on such proposals and/or meet to discuss any such proposals in more detail.

## 2. Repeal All Presumptive Minimum Sentences

IPRT believes that this Bill presents an opportunity to go further than simply comply with the [Wayne Ellis](#) case, and could be used to also repeal all presumptive minimum sentences as exist in the Firearms Act 1925, the Firearms Act 1964, the Misuse of Drugs Act 1977, the Firearms and Offensive Weapons Act 1990 and the Criminal Justice Act 2007.

Such amendments would be in line with IPRT’s consistent advocacy against the use of mandatory and presumptive minimum sentences. Numerous other bodies have also called for consideration to be given to the repeal of presumptive minimum sentencing regimes. For example:

- In its 2013 [Mandatory Sentences](#) report, the Law Reform Commission stated as follows: “The Commission recommends that the following be repealed: (i) the presumptive minimum sentencing regime applicable to drugs offences under section 27(3C) of the Misuse of Drugs Act 1977, and (ii) the presumptive minimum sentencing regime applicable to firearms offences under section 15 of the Firearms Act 1925; section 26, section 27, section 27A and section 27B of the Firearms Act 1964; and section 12A of the Firearms and Offensive Weapons Act 1990. The Commission also recommends that the use of presumptive minimum sentencing regimes should not be extended to other offences ... The Commission recommends that the following be repealed: (i) the presumptive sentencing regime applicable to serious repeat offences under section 25 of the Criminal Justice Act 2007...” (see paras.6.06 and 6.08)

- The Strategic Review on Penal Policy in its [2014 report](#) recommended that “no further mandatory sentences or presumptive minimum sentences should be introduced. In addition, the continuation of existing presumptive minimum sentences and the threshold for their application in drugs and other offences should be reviewed in the context of the recent judgments of the Court of Criminal Appeal with a view to determining if this type of sentencing satisfies the need for proportionality in sentencing and fulfils the objective of reducing crime. As an initial step to comply with the principle of proportionality, the Review Group recommends an increase in the value of drugs, currently €13,000, possession of which triggers the presumptive minimum sentence of 10 years to a level commensurate with that sentence.” (Rec 34)

The specific amendments we would propose for the 2021 Bill are as follows:

Relevant section of the Criminal Justice (Amendment) Bill 2021	IPRT Proposed Amendment to Bill
Section 4 – amendment of s.15 of Firearms Act 1925	In addition to the amendments proposed for s.15 of the 1925 Act (concerning the offence of possession of firearm with intent to endanger life), also remove s.15(4), (4A), (5) and (6) (all of which relate to the imposition of a presumptive minimum sentence).
Section 5 – amendment of ss.26, 27, 27A and 27B of the Firearms Act 1964	<p>In addition to the amendments proposed for the 1964 Act (concerning a number of offences relating to possession of firearm, use of firearms, carrying of firearm), also remove:</p> <ul style="list-style-type: none"> <li>• s.26(4), (4A), (5) and (6)</li> <li>• s.27(4), (4A), (5) and (6)</li> <li>• s.27A(4), (4A), (5) and (6)</li> <li>• s.27B(4), (4A), (5) and (6)</li> </ul> <p>All of the above provisions relate to the imposition of a presumptive minimum sentence.</p>
Section 6 – amendment of s.27 of the Misuse of Drugs Act 1977	In addition to the amendments proposed for the 1977 Act (concerning the sentencing imposed for offences u-s.15A or s.15B of the Act (possession or importation of drugs over certain value)), also remove s.27(3C) and (3D). These provisions relate to imposition of a presumptive minimum sentence.
Section 7 – amendment of s.12A of the Firearms and Offensive Weapons Act 1990	In addition to the amendments proposed for the 1990 Act (concerning the offence of shortening the barrel of a shotgun or rifle), also remove s.12A(9), (9A), (10) and (11). These provisions relate to the imposition of a presumptive minimum sentence.
Section 8 – amendment of s.25 of the Criminal Justice Act 2007	In addition to the amendments proposed for the 2007 Act (concerning a number of serious offences as listed under Sch 2 of the Act), remove s.25 entirely (all of which relates to the imposition of a presumptive minimum sentence for certain serious offences). This amendment would also have the effect of removing the statutory bar

on Temporary Release for a person serving a second sentence of imprisonment for one of the Sch 2 offences (see s.25(15)).
---

Further explanation as to the reasons behind IPRT’s opposition to mandatory and presumptive minimum sentencing is available in our 2013 [Mandatory Sentencing](#) position paper (due to be updated soon). In brief, reasons include the fact that: (i) there is no evidence mandatory or presumptive minimum sentences act as an effective deterrent to crime; and (ii) mandatory and presumptive minimum sentencing regimes contribute to rising imprisonment rates, which in turn costs more for the taxpayer with little evidence for its effectiveness in reducing crime.<sup>1</sup>

IPRT believes that this Bill provides an excellent opportunity to debate and remove the existing presumptive minimum sentences currently still on the statute book, in line with recommendations previously made. We accordingly ask you to consider tabling the above amendments when the Bill comes before the Committee for consideration.

### Further Information

If you are interested to further discuss the rationale behind IPRT’s proposed amendments and/or the issue of the statutory bar on temporary release or presumptive minimum sentencing more broadly, please do not hesitate to contact Molly Joyce, Legal & Public Affairs Manager, on [mjoyce@iprt.ie](mailto:mjoyce@iprt.ie) or 089 616 9971.

---

<sup>1</sup> See e.g. the Irish Prison Service 2019 Annual Report, which noted that the average cost of an “available, staffed prison space” was €75,349: Irish Prison Service, *Annual Report 2019*, at p.10, available at: [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-2019-Web.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf). See also recent statistics from the Central Statistics Office, which showed that more than half (55%) of prisoners released from custody in 2014 re-offended within three years: Central Statistics Office, *Press Statement Prison Re-offending 2011–2017*, available at: <https://www.cso.ie/en/csolatestnews/pressreleases/2020pressreleases/pressstatementprisonreoffendingstatistics/>.