
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 82

The Parole Commissioners' Rules (Northern Ireland) 2009

PART 3

PRISONERS' CASES

Listing and provisional timetable

6.—(1) Where a case is referred to the Commissioners by the Secretary of State the Commissioners shall, within 7 days, list the case and serve written notice of referral on the parties indicating a provisional timetable for consideration of the case by a single Commissioner.

(2) Within 5 weeks of the case being listed, the prisoner shall notify the Commissioners and the Secretary of State whether the prisoner wishes to attend any oral hearing that may be held.

(3) Subject to rules 16(2) and 17(2) any oral hearing of a case shall be fixed for a date that:

- (a) where the single Commissioner has provisionally directed that the prisoner be released or has directed that the case should be considered by a panel, is no later than 8 weeks from the date of the provisional direction or direction as the case may be; or
- (b) where the single Commissioner has directed that the prisoner not be released and the prisoner has served a notice in accordance with rule 13(5), is no later than 8 weeks from the date of service of the notice.

Representation

7.—(1) Subject to paragraphs (2) and (3) the prisoner may appoint a person to act as the prisoner's representative.

(2)) The following persons may act as a representative of the prisoner only with the consent of the Chief Commissioner:

- (a) any person serving a sentence of imprisonment;
- (b) any person who has been released from prison on licence for life, or any person sentenced to an indeterminate or extended custodial sentence who is on licence having been released from prison under Articles 18 or 20 of the 2008 Order;
- (c) any person who is on licence having been released from prison under Article 26 of the Criminal Justice (Northern Ireland) Order 1996(1);
- (d) any person who is on licence having been released from prison under Article 46 of the Criminal Justice (Children) (Northern Ireland) Order 1998(2).

(3) Subject to rules 14 and 18, the Chief Commissioner, in deciding whether to grant consent in accordance with paragraph (2), may require the prisoner and the prisoner's proposed representative to provide such evidence, whether oral or written, including prison licence documentation and

(1) SI 1996/3160 (N.I. 24) as modified by S.R. 2008 No. 217

(2) SI 1998/1504 (N.I. 9) as amended by S.I. 2001/2564 (N.I. 2)

criminal records, as the Chief Commissioner considers necessary to enable the Chief Commissioner to make a decision.

(4) Within 3 weeks of the case being listed, the prisoner shall notify the Commissioners and the Secretary of State of the name, address and occupation of any person appointed in accordance with paragraph (1).

(5) Where the prisoner has not appointed a representative, the single Commissioner appointed under rule 12(1) or the chairman of the panel appointed under rule 12(2) may, with the prisoner's consent, appoint an eligible person to act on the prisoner's behalf and shall notify the Secretary of State accordingly.

(6) In paragraph (5) "eligible person" means someone not falling within the category of person at paragraph (2).

(7) Where the prisoner appoints a new representative or the name, address or occupation of the prisoner's representative changes, the prisoner shall serve written notice giving details of the changes on the Commissioners and on the Secretary of State within 7 days of the appointment of the new representative or becoming aware of the changes.

(8) Where a party wishes another person other than a representative or a witness to be admitted to an oral hearing, the party shall make a written application to the Commissioners for the admission of such person.

(9) An application under paragraph (8) shall state the reason for the application, include the name, address and occupation of the person to whom it relates and be made no later than 3 weeks prior to the date of such hearing.

(10) The chairman of the panel may grant or refuse an application under paragraph (8) and shall communicate within 7 days the decision to both parties giving reasons in writing, in the case of a refusal, for the decision.

(11) Before granting any application under paragraph (8) the chairman of the panel shall obtain the agreement of:

- (a) in the case where such hearing is to be held at a prison or other place of detention, a governor; and
- (b) in any other case, the person in whom is vested the authority to agree.

(12) In paragraph (11)(a) "governor" means any governor and includes a prison officer to whom a governor's functions has been delegated.

Information and reports by the Secretary of State

8.—(1) Within 8 weeks of the case being listed for hearing, and subject to paragraph (2) and rule 9, the Secretary of State shall serve on the Commissioners and the prisoner or the prisoner's representative:

- (a) the information specified in Part A of Schedule 1;
- (b) the reports specified in Part B of that Schedule; and
- (c) such further information as the Secretary of State considers to be relevant to the case.

(2) Any part of the information or reports referred to in paragraph (1) which, in the opinion of the Secretary of State, should be withheld from the prisoner on the ground that its disclosure would adversely affect the health or welfare of the prisoner or any other person, shall be recorded in a separate document and served only on the Commissioners together with the reasons for believing that its disclosure would have that effect.

(3) Where a document is withheld from the prisoner in accordance with paragraph (2), it shall nevertheless be served as soon as practicable on the prisoner's representative if that representative is:

- (a) a barrister or solicitor;
- (b) a registered medical practitioner; or
- (c) a person whom the single Commissioner, or the chairman of the panel, directs is suitable by virtue of experience or professional qualification;

provided that no information disclosed in accordance with this paragraph shall be disclosed either directly or indirectly to the prisoner or to any other person without the authority of the single Commissioner, or the chairman of the panel.

Non-disclosure of confidential information

9.—(1) This rule applies where the Secretary of State certifies as confidential information any information, document or evidence which, in the Secretary of State's opinion, would, if disclosed to the prisoner or any other person be likely to:

- (a) adversely affect the safety of any individual;
- (b) result in the commission of an offence;
- (c) facilitate an escape from lawful custody or the doing of any act prejudicial to the safe keeping of persons in custody;
- (d) impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- (e) be contrary to the interests of national security; or
- (f) otherwise cause substantial harm to the public interest;

and any such information, document or evidence is referred to in these rules as confidential information.

(2) Neither the Commissioners nor a special advocate shall in any circumstances disclose to or serve on the prisoner, the prisoner's representative, any witness appearing for the prisoner or any other person, any confidential information and shall not allow the prisoner, the prisoner's representative, any witness appearing for the prisoner or any other person to hear argument or the examination of evidence which relates to any confidential information.

(3) Where the Secretary of State has certified information as confidential, the Secretary of State shall, within 7 days of doing so, serve on the prisoner and on the Commissioners, whether by way of inclusion with the case papers or otherwise, written notice of this stating, so far as the Secretary of State considers it possible to do so without causing harm of the kind referred to in paragraph (1), the gist of the information withheld and the reasons for withholding it.

Evidence of the prisoner

10. Where the prisoner wishes to make representations about the case or to adduce documentary evidence, the prisoner shall serve such representations and documentary evidence on the Commissioners and the Secretary of State within 14 weeks of the case being listed.

Further evidence and information

11.—(1) Following receipt of the papers from the parties, the single Commissioner or the chairman of the panel may require either party to produce further evidence or information on any topic relevant to the conduct or determination of the case and may stay the progress of the case until a response to their requirement has been received.

(2) Subject to rules 8(2) and 9, any further evidence or information produced under paragraph (1) shall be served by the party responding on the Commissioners and on the other party.

(3) A party may not supplement or add to case papers, response papers or further evidence and information produced and served under this rule without the leave of the single Commissioner or the chairman of the panel dealing with the case, as the case may be.

Appointment of single Commissioner and panels of Commissioners

12.—(1) Within 7 days from the referral of a prisoner's case to the Commissioners by the Secretary of State the Chief Commissioner shall appoint a Commissioner who shall act as the single Commissioner for the purpose of conducting proceedings in relation to a prisoner's case pursuant to rule 13.

(2) Where consideration of a prisoner's case is required pursuant to rules 16 or 17 the Chief Commissioner shall appoint three Commissioners to form a panel for the purpose of conducting proceedings in relation to a prisoner's case and shall nominate one of the three Commissioners to act as chairman of the panel.

(3) The members of the panel appointed under paragraph (2) shall, so far as reasonably practicable, include a person who is legally qualified as described in paragraph 1(2)(a) of Schedule 4 to the 2008 Order.

(4) The members of the panel appointed under paragraph (2) shall, so far as reasonably practicable, include a registered medical practitioner who is a psychiatrist, or a chartered psychologist.

(5) In relation to any prisoner's case, no Commissioner appointed under paragraph (1) shall be appointed to the panel formed under paragraph (2).

(6) If a Commissioner who has been appointed as the single Commissioner under paragraph (1) or as a member of a panel under paragraph (2) becomes unavailable or if the Chief Commissioner considers that it would be inappropriate for that Commissioner to continue to act the Chief Commissioner shall, subject to paragraphs (3), (4) and (5), appoint another Commissioner to take the place of that Commissioner.

Consideration by single Commissioner

13.—(1) Within 4 weeks of the expiry of the time specified in rule 10 the single Commissioner shall consider the prisoner's case and make a provisional direction or direction under paragraph (2).

(2) The single Commissioner shall either:

- (a) provisionally direct that the prisoner be released;
- (b) provisionally direct that the prisoner not be released; or
- (c) direct that the case be considered by a panel appointed under rule 12(2).

(3) Any direction or provisional direction under paragraph (2) shall be recorded in writing and shall be provided to the parties within 7 days of the date of the direction or provisional direction, and reasons for that direction or provisional direction shall be given at the same time.

(4) Where the single Commissioner provisionally directs under paragraph (2) that the prisoner not be released, the prisoner may require a panel appointed under rule 12(2) to consider the prisoner's case.

(5) Where a prisoner requires their case to be considered by a panel under paragraph (4), the prisoner must within 2 weeks of the date of receipt of the provisional direction serve notice to that effect on the Commissioners and the Secretary of State.

(6) If no notice has been served in accordance with paragraph (5), the provisional direction of the single Commissioner shall become final and shall be provided to the parties within 1 week of the expiry of the period stipulated in paragraph (5).

(7) Subject to paragraph (6); directions made under paragraph (2)(a) or (b) are provisional directions only, final directions shall only be made pursuant to rules 16 or 17.

Directions of single Commissioner

14.—(1) Subject to paragraph (2), before a panel is appointed under rule 12(2), the single Commissioner may give, vary or revoke directions to ensure the efficient further conduct of the prisoner's case, including directions in respect of matters such as:

- (a) the provisional timetable for the case;
- (b) subject to paragraph (8) the varying of the time within which or by which an act, required or authorised by these rules, is to be done;
- (c) the service of documents;
- (d) the submission and production of evidence;
- (e) the appointment of a special advocate and the conduct of a special advocate under rule 19;
- (f) the representation of the prisoner;

and following the single Commissioner's appointment under rule 12(1) and consideration of the prisoner's case under rule 13 the single Commissioner shall consider whether such directions need to be given.

(2) Directions under paragraph (1) may be given, varied or revoked either:

- (a) of the single Commissioner's own motion; or
- (b) on the written application of a party to the Commissioners which has been served on the other party and on the Commissioner and which specifies the direction sought.

(3) Within 7 days of making a direction under paragraph (1) the single Commissioner shall serve on the parties such direction which shall be recorded in writing with reasons and dated and signed by the single Commissioner.

(4) Within 7 days of being notified of a direction given under paragraph (3) either party may appeal to the Chief Commissioner by serving written notice of appeal on both the Chief Commissioner and the other party stating the grounds of the appeal.

(5) Within 7 days of being served with a notice of appeal under paragraph (4) the other party may in reply make written representations on the appeal which shall be served on the Chief Commissioner and the party moving the appeal.

(6) The Chief Commissioner shall consider the written representations of the parties and after having done so shall allow or reject the appeal and make such further or other directions of the type mentioned in paragraph (1) as the Chief Commissioner sees fits.

(7) The direction of the Chief Commissioner made under paragraph (6) shall be final and shall be recorded in writing with reasons, dated and signed by the Chief Commissioner and served on the other parties not more than 7 days after the date of making the direction.

(8) The time specified in rule 13(5) shall not be varied save in exceptional circumstances.

Adjournment

15.—(1) The single Commissioner or the panel may at any time adjourn the consideration of a prisoner's case by way of direction for any purpose they consider appropriate

(2) On adjourning a case under paragraph (1), the single Commissioner or chairman of the panel shall give such directions as they consider appropriate for ensuring the prompt consideration of the case.

(3) Any direction made under paragraphs (1) or (2) shall be recorded in writing and shall be provided to the parties within 7 days of the date of the direction and reasons for that direction shall be given at the same time.

(4) Where an oral hearing is adjourned without a date having been fixed under paragraph (2), the chairman of the panel shall give the parties not less than 14 days notice, or such shorter notice to which all parties may consent, of the date, time and place of the resumed hearing.

Provisional direction of single Commissioner that the prisoner be released or single Commissioner directs that the case should be considered by a panel

16.—(1) In any case where:

- (a) the single Commissioner has made a provisional direction under rule 13(2)(a) that the prisoner be released; or
- (b) case should be considered by a panel;

the prisoner's case shall be considered by a panel appointed under rule 12(2).

(2) Where a panel is required to consider a prisoner's case under paragraph (1) the panel shall hold an oral hearing unless both parties and the panel agree otherwise.

(3) The panel shall either:

- (a) direct that the prisoner not be released; or
- (b) direct that the prisoner be released.

Provisional direction of single Commissioner that the prisoner not be released

17.—(1) Where the single Commissioner has made a provisional direction under rule 13(2)(b) that the prisoner not be released, and the prisoner has served such notice as is required under rule 13(5) a panel formed under rule 12(2) shall consider the prisoner's case.

(2) Where a panel is required to consider a prisoner's case under paragraph (1) the panel shall hold an oral hearing, unless both parties and the panel agree otherwise.

(3) The panel shall either:

- (a) direct that the prisoner not be released; or
- (b) direct that the prisoner be released.

Directions of chairman of the panel

18.—(1) Subject to paragraph (2), the chairman of the panel may give, vary or revoke directions for the conduct of the case allocated to the panel, including directions in respect of matters such as:

- (a) the timetable for the case;
- (b) an act, required or authorised by these rules, is to be done;
- (c) the service of documents;
- (d) the submission and production of evidence;
- (e) the curing or waiving of irregularities;
- (f) the listing, location and adjournment of hearings, including hearings under paragraph 7(b);
- (g) the calling of witnesses;
- (h) advocate under rule 19;
- (i) the representation of the prisoner;

and following appointment under rule 12(2), the chairman of the panel shall consider whether such directions need to be given at any time.

(2) Directions under paragraph (1) may be given, varied or revoked either:

- (a) of the chairman of the panel's own motion; or
- (b) on the written application of a party to the Commissioners which has been served on the other party and which specifies the direction which is sought.

(3) Within 7 days of making a direction under paragraph (1) the chairman of the panel shall serve on the parties such direction which shall be recorded in writing with reasons and dated and signed by the chairman of the panel.

(4) Within 7 days of being served with a direction given under paragraph (3) either party may appeal to the Chief Commissioner by serving a written notice of appeal on both the Chief Commissioner and the other party stating the grounds of the appeal.

(5) Within 7 days of being served with a notice of appeal under paragraph (4) the other party may in reply make written representations on the appeal which shall be served on the Chief Commissioner and the party moving the appeal.

(6) The Chief Commissioner shall consider the written representations of the parties.

(7) After considering the written representations made under paragraph (6) the Chief Commissioner may make a direction:

- (a) upon the basis of the written representations; or
- (b) where the Chief Commissioner thinks it necessary, after hearing oral submissions from the parties, and in such circumstances, the Chief Commissioner shall give the parties at least 7 days' notice of such a hearing.

(8) Subject to paragraph (9), a hearing under paragraph 7(b) shall be conducted in accordance with rule 22.

(9) The Chief Commissioner may hold a hearing described under paragraph 7(b) in the absence of the prisoner at a location other than the prison or other place where the prisoner is detained.

(10) The direction of the Chief Commissioner made under paragraph (7) shall be final and shall be recorded in writing with reasons, dated and signed by the Chief Commissioner, and served on the parties not more than 7 days after the date of the making of the direction.

Special advocates

19.—(1) On receiving a certificate of confidential information under rule 9, the single Commissioner or chairman of the panel dealing with the case shall inform the Advocate General for Northern Ireland of the proceedings before the panel, with a view to the Advocate General for Northern Ireland, if the Advocate General for Northern Ireland thinks fit to do so, appointing a special advocate to represent the interests of the prisoner.

(2) The function of the special advocate is to represent the interests of the prisoner, as mentioned by paragraph (1), by:

- (a) making written submissions to the single Commissioner;
- (b) making submissions to the panel in any oral hearings from which the prisoner and the prisoner's representative are excluded;
- (c) cross-examining witnesses at any such hearings; and
- (d) making written submissions to the panel.

(3) Except in accordance with paragraph (4) a special advocate may not communicate directly or indirectly with the prisoner whose interests the special advocate has been appointed to represent on any matter connected with the case before the panel.

(4) A special advocate may seek directions from the single Commissioner or chairman of the panel dealing with the case authorising the special advocate to seek information in connection with the case from the prisoner whose interests the special advocate has been appointed to represent.

(5) In paragraph (4) a reference to a prisoner whose interests the special advocate has been appointed to represent includes the representative of the prisoner.

(6) Until section 27 of the Justice (Northern Ireland) Act 2002⁽³⁾ comes into force, paragraph (1) shall have effect as if the references to the Advocate General for Northern Ireland were references to the Attorney-General.

Notice of oral hearing

20.—(1) When finalising the date for an oral hearing the Commissioners shall consult the parties.

(2) The Commissioners shall give the parties at least 2 weeks' notice of the date, time and place scheduled for oral hearing or such shorter notice to which the parties may consent.

Witnesses

21.—(1) Where one party wishes to call witnesses at the oral hearing, that party shall make a written application to the chairman of the panel, and shall serve a copy on the other party at least 6 weeks before the date of the hearing, giving the name, address and occupation of the witnesses whom that party wishes to call and the substance of the evidence that party proposes to adduce.

(2) The chairman of the panel may grant or refuse an application under paragraph (1) and shall communicate within 7 days the decision to both parties, giving reasons in writing, in the case of a refusal, for the decision.

Location and privacy of oral hearings

22.—(1) Subject to rule 18(9) oral hearings shall be held at the prison unless the chairman of the panel and the parties agree otherwise.

(2) Oral hearings shall be held in private.

(3) Information about the proceedings and the names of any persons concerned in the proceedings shall not be made public.

(4) The chairman of the panel may admit to the oral hearing such persons on such terms and conditions as the chairman of the panel considers appropriate.

Oral hearing procedure

23.—(1) At the beginning of the oral hearing the chairman of the panel shall explain the order of proceedings which the panel proposes to adopt.

(2) Subject to this rule, the panel shall conduct the oral hearing in such manner as they consider most suitable to the clarification of the issues before them and generally to the just handling of the case and they shall, so far as appears to them appropriate, seek to avoid formality in the proceedings.

(3) Subject to paragraphs (5), (7) and (8) the parties shall be entitled to appear and be heard at the oral hearing and take such part in the proceedings as the panel considers appropriate and the parties may:

- (a) make submissions;
- (b) hear each other's evidence and submissions;

(c) call any witnesses whom the chairman of the panel has authorised to give evidence in accordance with rule 21; and

(d) put questions to any witness appearing at the oral hearing.

(4) Subject to rule 11 the parties may not, without leave of the panel, rely on or refer to documents, information or evidence which do not appear in substance in the case papers.

(5) The chairman of the panel may require any person present at the oral hearing who is, in the chairman of the panel's opinion, behaving in a contemptuous or disruptive manner, to leave, and may permit that person to return, if at all, only on such conditions as the chairman of the panel may direct.

(6) The panel may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law, but no person shall be compelled to give evidence or produce any document which that person could not be compelled to give or produce on the trial of an action in the High Court.

(7) The panel shall require the prisoner, any witness appearing for the prisoner and any other person they think appropriate, to leave the hearing where argument is being heard or evidence is being examined which includes or relates to information or reports withheld from the prisoner or others under rule 8(2).

(8) The panel shall require the prisoner, the prisoner's representative, any witness appearing for the prisoner and any other person they think appropriate, to leave the hearing where argument is being heard or evidence is being examined which includes or relates to confidential information which has not been made available to the prisoner or any other person under rule 9.

(9) After all the evidence has been heard, the prisoner shall be given a further opportunity to address the panel.

The decision of the panel

24.—(1) The decision of the majority of the panel shall be the decision of the panel.

(2) The decision of the panel shall be recorded in writing with reasons, dated and signed by the chairman of the panel, and communicated in writing to the parties not more than 7 days after the end of the consideration of the case.