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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. 385**

**PRISONS**

**The Parole Board (Scotland) Rules 2022**

<i>Made</i>	- - - -	<i>20th December 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>22nd December 2022</i>
<i>Coming into force</i>	- -	<i>1st April 2023</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred on them by section 20(4), (4A) and (4B) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(1), and all other powers enabling them to do so.

**PART 1**

**Introduction**

**Citation, commencement and application**

1.—(1) These Rules may be cited as the Parole Board (Scotland) Rules 2022 and come into force on 1 April 2023.

(2) These Rules apply to every case referred by the Scottish Ministers to the Board on or after 1 April 2023.

**Interpretation**

2. In these Rules, except where the context otherwise requires—

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993,

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2),

“the Board” means the Parole Board for Scotland,

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(1) 1993 c. 9. Section 20(4) was amended by the Crime and Disorder Act 1998 (c. 37), schedule 8 paragraph 106 and the Convention Rights Compliance (Scotland) Act 2001 asp 7 (“the 2001 Act”), section 5(1)(b). Subsection (4A) was inserted by the 2001 Act, section 5(1)(c). Subsection (4B) was inserted by the Management of Offenders (Scotland) Act 2019 (asp 14) (“the 2019 Act”), section 52(2). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of Section 53 of the Scotland Act 1998 (c. 46).

(2) 1995 c. 46.

“casework panel” means the members appointed under rule 7(1) or, as the case may be, a single member appointed under rule 7(3), and references in Part 3 to a “panel” are to be construed accordingly,

“chairperson of the Board” means the chairperson appointed under paragraph 1 of schedule 2 of the 1993 Act<sup>(3)</sup>,

“damaging information” means information to which rule 9(1) applies,

“dossier information” means the information sent to the Board under rule 5,

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000<sup>(4)</sup>,

“indeterminate case” means—

- (a) the case of a person sentenced by a court in Scotland to life imprisonment, detention without limit of time, or detention for life,
- (b) the case of a person in respect of whom an order for lifelong restriction has been made under section 210F of the 1995 Act<sup>(5)</sup>,
- (c) the case of a person to whom section 10 or 10A of the 1993 Act<sup>(6)</sup> applies,
- (d) the case of a person subject to an extended sentence by virtue of section 210A of the 1995 Act<sup>(7)</sup>, who—
  - (i) has been recalled to custody under section 17(1) of the 1993 Act, and
  - (ii) is serving the extension period (within the meaning of section 210A(2)(b) of the 1995 Act) of that sentence.

but only where that case is referred under section 2(5)(a), 2(5B), 2(5C), 2(6), 3A(2) or 17(3) of the 1993 Act<sup>(8)</sup>,

“oral hearing panel” means the members appointed under rule 7(4), and references in Part 4 to a “panel” are to be construed accordingly,

“party” in relation to a case referred to the Board means the Scottish Ministers and the person concerned,

“person concerned” means the person to whom a case referred to the Board relates,

“panel chairperson” means the chairperson of a casework panel or, as the case may be, the chairperson of an oral hearing panel,

“risk management plan” means a risk management plan which is required to be prepared by virtue of section 6 of the Criminal Justice (Scotland) Act 2003<sup>(9)</sup>,

“risk assessment report” means a risk assessment report prepared in respect of a person subject to a risk assessment order under section 210B of the 1995 Act, or, as the case may be, a report prepared under section 210D of the 1995 Act<sup>(10)</sup>, and

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<sup>(3)</sup> Paragraph 1 of schedule 2 was amended by the 2019 Act (asp 14), section 45(2)(a).

<sup>(4)</sup> 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 22), schedule 17 paragraph 158.

<sup>(5)</sup> Section 210F was inserted by the Criminal Justice (Scotland) Act 2003 (asp 7) (“the 2003 Act”, section 1, and relevantly amended by the Management of Offenders (Scotland) Act 2005 (asp 14), section 14(2) and (3).

<sup>(6)</sup> Section 10 was relevantly amended by the 2001 Act, section 3; the 2003 Act, schedule 4, paragraph 2; the Criminal Justice Act 2003 (c. 44), schedule 32, paragraph 66 and the Sentencing Act 2020 (c. 17), schedule 24, paragraph 125. Section 10A was added by the 2001 Act, section 3(2).

<sup>(7)</sup> Section 210A was inserted by the Crime and Disorder Act 1998 (c. 37) and has been relevantly amended by the Counter-Terrorism and Border Security Act 2019 (c. 3), section 10 and by the Counter-Terrorism and Sentencing Act 2021 (c. 11) (“the 2021 Act”), schedule 13, paragraph 53.

<sup>(8)</sup> Section 2(5B) and (5C) were inserted by the 2001 Act, section 1(3) and amended by the 2003 Act, section 29(2). Section 2(6) was amended by the 2001 Act, section 29(2) and the 2021 Act, schedule 13, paragraph 52. Section 3A was inserted by the Crime and Disorder Act 1998 (c. 37), section 88, and subsection (2) amended by the 2003 Act, section 31. Section 17(3) was substituted by the 2003 Act, section 36.

<sup>(9)</sup> 2003 asp 7.

<sup>(10)</sup> Sections 210B and 210D were inserted by section 1 of the 2003 Act.

“working day” means any day other than a Saturday, Sunday, or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(11).

## PART 2

### General Rules

#### Application and interpretation of Part

3.—(1) Subject to paragraph (2), and except where otherwise expressly provided, this Part applies to every case referred by the Scottish Ministers to the Board.

(2) In the application of this Part to a case where the Board is considering whether to recommend the revocation of the person concerned’s licence and recall of that person to prison under section 17(1) of the 1993 Act(12)—

- (a) rules 4 and 10 do not apply, and
- (b) in rule 5, the Scottish Ministers—
  - (i) may send only the information and documents available to them at the time when the case is referred to the Board,
  - (ii) are not required to send the dossier information to the person concerned.

(3) In this Part, references to a “panel” in relation to anything done in respect of a case are to the casework panel or, as the case may be, oral hearing panel appointed under rule 7 to consider the case.

#### Notification of referral of case

4. When a case is referred to the Board the Scottish Ministers must at the same time notify the person concerned, in writing, that the case has been referred.

#### Scottish Ministers’ Dossier

5.—(1) When a case is referred to the Board, the Scottish Ministers must send information and documents to the Board and, subject to Rule 9, to the person concerned in accordance with this rule.

- (2) In every case, the Scottish Ministers must send—
- (a) as far as practicable and relevant to the case, the information and documents listed in schedule 1, and
  - (b) any other information or document which the Scottish Ministers consider is relevant to the case.
- (3) Where the case relates to a person in respect of whom an order for lifelong restriction has been made under section 210F of the 1995 Act(13), the Scottish Ministers must send—
- (a) a copy of the latest risk management plan approved by the Risk Management Authority(14) in respect of that person, or
  - (b) where no such plan has been approved, a copy of the risk assessment report relating to that person.

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(11) 1971 c. 80.

(12) Section 17(1) and (1A) were substituted by section 36(4) of the 2003 Act.

(13) 1995 c. 46; section 210F was inserted by section 1 of the Criminal Justice (Scotland) Act 2003 (asp 7) (“the 2003 Act”) and relevantly amended by the Management of Offenders (Scotland) Act 2005 (asp 14), section 14(2) and (3).

(14) The Risk Management Authority was established by section 3 of the 2003 Act.

(4) The information mentioned in paragraphs (2) and (3) must be sent no later than 10 working days after the case is referred to the Board.

#### **Procedure applying to consideration of a case**

6.—(1) An indeterminate case must be considered under the procedure in Part 4.

(2) Any other case referred to the Board may be determined either—

- (a) by consideration on the papers under the procedure in Part 3, or
- (b) by means of an oral hearing under the procedure in Part 4.

(3) In a case to which paragraph (2) applies, the Board may, on its own motion or on the application of the person concerned, and having regard to the interests of justice, choose whether the case is to be determined under the procedure in Part 3 or Part 4.

(4) The Board may grant or refuse an application made under paragraph (3) and must give each party written notice of that decision and, where the request is refused, of the reasons for that decision.

#### **Composition of panel to consider case**

7.—(1) Subject to paragraphs (3) and (7), a casework panel of any 2 or 3 members of the Board is to be appointed for the purpose of—

- (a) exercising the functions of the Board under this Part (except where the context otherwise requires), and
- (b) considering a case which is to be determined under Part 3.

(2) For the purpose of paragraph (1), one of the appointed members is to be designated as panel chairperson.

(3) A casework panel may be formed of a single member of the Board in respect of a case which is to be considered for the purpose of—

- (a) making a recommendation under section 17(1) (revocation of licence) of the 1993 Act,
- (b) recommending that a licence condition in respect of the person concerned be included on release, inserted, varied or cancelled.

(4) Subject to paragraphs (5), (6) and (7), an oral hearing panel of any 2 or 3 members of the Board is to be appointed for the purpose of considering a case which is to be determined under Part 4.

(5) Where an oral hearing panel is appointed to consider an indeterminate case, the panel must include a legally qualified member who is to be appointed as chairperson of the panel.

(6) Where an oral hearing panel is appointed to consider any case which is not an indeterminate case—

- (a) one of the appointed members who is a legally qualified member, or
- (b) if there is no legally qualified member on the panel, any other member,

is to be designated as chairperson of the oral hearing panel.

(7) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a case may be appointed to consider the same case under section 17(3) of that Act.

(8) In the event of the death, incapacity, or unavailability for any other reason of a member appointed under this rule—

- (a) if the absent member is the panel chairperson, or if the case was to be considered by a panel of 2 members or by a single member, a replacement member must be appointed,
- (b) in any other case, the case may be dealt with by the remaining panel members.

- (9) In this rule and rule 8, “legally qualified member” means a member who is —
- (a) a solicitor or advocate of not less than 10 years standing,
  - (b) a current or former Senator of the College of Justice, or
  - (c) a current or former sheriff principal, sheriff, or summary sheriff.

### **Preliminary hearings**

**8.—(1)** A preliminary hearing for the purpose of any matter relating to a case is to be conducted in accordance with this rule.

- (2) Subject to paragraph (3), a preliminary hearing is to be conducted by—
- (a) the chairperson of the Board sitting alone or with other members, or
  - (b) by another member or members appointed for that purpose.

(3) A preliminary hearing relating to a case to be determined under Part 4 is to be conducted by the panel chairperson or by another legally qualified member appointed for that purpose, in either case sitting alone or with other members.

(4) 10 working days’ notice must be provided to the parties of the date, time and place at which a preliminary hearing is to take place.

(5) The person or persons conducting the hearing may require the parties to provide written representations on the matter or matters to be determined at the preliminary hearing.

- (6) Subject to paragraph (7), a preliminary hearing is to be held in private.

(7) The parties are entitled to attend and be represented at a preliminary hearing and to make oral submissions at the hearing on the matter or matters to be determined.

(8) Following a preliminary hearing the decision of the person or persons conducting the hearing is to be recorded in writing, together with a statement of the reasons for that decision, and sent to the parties within 10 working days of the conclusion of that hearing.

### **Non-disclosure of information**

**9.—(1)** This rule applies where information mentioned in paragraph (2) is determined by the Scottish Ministers, a panel or the Board, as the case may be, to be information which should not be disclosed to the person concerned (“damaging information”) for one of the following reasons—

- (a) the disclosure would be likely to adversely affect the health, welfare or safety of any person,
- (b) the disclosure would be likely to result in the commission of an offence,
- (c) the disclosure would be likely to facilitate an escape from legal custody or adversely affect the safe keeping of any person in legal custody,
- (d) the disclosure would be likely to impede the prevention, investigation or detection of offences, or the apprehension or prosecution of suspected offenders,
- (e) the disclosure would be likely to have an adverse effect on national security,
- (f) the disclosure would be likely to otherwise damage the public interest.

(2) The information is any—

- (a) dossier information relating to the case,
- (b) other information identified by the Scottish Ministers as relevant to the case,
- (c) written representations made by a victim in relation to the case, a family member of such a victim, or a family member of the person concerned or any written record of oral representations made by such a person,

- (d) other information or document provided in relation to the case.
- (3) Where this rule applies—
- (a) the damaging information is not to be sent to the person concerned,
- (b) a written notice is to be sent to the person concerned—
- (i) informing that person that certain information has not been sent to them because it has been classed as damaging information,
- (ii) specifying the reason, of those listed in paragraph (1), for the information being classed as damaging information, and
- (iii) setting out, as far as is practicable without prejudicing that reason, the substance of the damaging information.
- (c) if the notice mentioned in sub-paragraph (b) is sent by the Scottish Ministers, a copy of the notice is to be sent to the Board at the same time.
- (4) The panel is then to consider the damaging information and determine whether it is material to their consideration of the case.
- (5) If the panel determines that the information is not material to their consideration of the case, the case may be determined without having regard to that information.
- (6) If the panel determines that the information is or could be material to the case, it may make arrangements for the withholding of the information from the person concerned to be scrutinised at a preliminary hearing or such other proceedings as the panel considers appropriate.
- (7) For the purpose of paragraph (6), the arrangements may include the appointment of a special advocate to review the damaging information and make representations to the panel as to—
- (a) the justification for withholding the information from the person concerned, and
- (b) whether the interests of justice, balanced against that justification, require any additional disclosure of any part of the information to the person concerned.
- (8) The special advocate must not disclose the content of the damaging information to the person concerned, their representative, or to any person who is not a member of the panel.
- (9) Following any steps taken under paragraph (6), the panel must determine whether any further disclosure of the information to the person concerned is required in the interests of justice, and, if so, must make arrangements to send that information to that person as soon as possible.
- (10) In this rule—
- “special advocate” means an independent solicitor or advocate,
- “victim” means any victim of the offence for which the person concerned’s current sentence was imposed.

### **Written representations**

**10.—(1)** The person concerned may submit written representations in relation to their case, together with any other information or document which that person considers to be relevant and wishes the panel to take into account, within four weeks of the date on which the dossier information is sent to the person under rule 5.

(2) Subject to paragraph (3), where any other information, or any written notice under these Rules, is sent to the person concerned, that person may submit representations on that information or notice within four weeks of the date on which the information or notice was sent.

(3) Where information in relation to a case is provided to the Board or to a panel at a time which does not allow the period of four weeks mentioned in paragraph (2) to be made available, the panel

must allow 5 working days (or such shorter period as appears to be in the interests of justice, having regard to the nature of the information) for the person concerned to submit representations.

(4) Representations under paragraph (2) may, in particular, include representations about the non-disclosure of any damaging information to which a written notice under rule 9(3)(b) relates.

### **Matters to be taken into account**

**11.** In considering a case, the panel may take into account any matter which it considers to be relevant to the case, including—

- (a) the nature and circumstances of any offence of which the person concerned has been convicted or found guilty by a court,
- (b) the conduct of the person concerned over the duration of their current sentence or sentences,
- (c) the risk of the person concerned committing any offence or causing harm to any other person if that person were to be released on licence, remain on licence or be re-released on licence (as the case may be),
- (d) what the person concerned intends to do if released on licence, permitted to remain on licence, or re-released (as the case may be), and the likelihood of that person fulfilling those intentions,
- (e) the effect on the safety or security of any other person (including in particular any victim or any family member of a victim, or any family member of the person concerned), were the person concerned to be released on licence, remain on licence, or be re-released on licence (as the case may be).

### **Additional matter to be taken into account in certain cases**

**12.—**(1) This rule applies to a case where—

- (a) the person concerned is serving a sentence of life imprisonment, detention for life or detention without limit of time,
- (b) the sentence was imposed following a conviction for murder or culpable homicide imposed by a court in Scotland, or for an equivalent offence imposed by a court elsewhere in the United Kingdom,
- (c) the panel does not know where and how the victim's remains were disposed of, and
- (d) the panel believes that the person concerned has information about where or how the victim's remains were disposed of which that person has not disclosed.

(2) Where this rule applies the panel may take into account the matter mentioned in paragraph (1) (d) when considering the case.

(3) In this rule, "victim" means any victim of the offence for which the sentence mentioned in paragraph (1)(a) was imposed.

### **Confidentiality**

**13.—**(1) The information to which this rule applies must not be disclosed either directly or indirectly to any person not involved in the proceedings to which the information relates or to the public, unless an exception listed in paragraph (3) applies.

(2) This rule applies to —

- (a) information related to a case referred to the Board, or to the proceedings of the Board or a panel in considering a case,

- (b) information about any application, document, or any other information provided to the Board or to a panel,
  - (c) the name of any person involved in the proceedings.
- (3) The exceptions are—
- (a) if, and to the extent that, the chairperson of the Board or the chairperson of the panel considering the case directs or otherwise authorises disclosure of the information,
  - (b) to the extent necessary in connection with any court proceedings or any person’s statutory functions, or
  - (c) to the extent necessary for the purpose of a summary published under rule 34.

### **Time**

**14.**—(1) If the period of time specified in these Rules for doing an act expires on a Saturday, Sunday or bank holiday, the act is done in time if it is done on the next working day.

(2) Subject to paragraph (3), a period of time specified in these Rules may be varied for the purpose of a particular case by a panel, or the Board as the case may be, either on its own motion or on the application of a party to the case.

(3) If a panel or the Board varies a period of time under this Rule, it must have regard to the desirability of avoiding unnecessary delay in relation to the case, and the need to ensure fairness to the parties.

### **Sending of documents**

**15.** Any application, document, notice, or other written material which, under these Rules, may or must be made, served, given, sent or otherwise transmitted to any person may be sent—

- (a) as an electronic communication (where an email address or other details have been provided for that purpose), or
- (b) by pre-paid post, or otherwise delivered—
  - (i) where the intended recipient is the Board, a panel or any member of the Board or member of a panel, to the office of the Board, and
  - (ii) in any other case, to the last known address of the intended recipient.

### **Format of parole proceedings**

**16.**—(1) Subject to this Rule, proceedings of a panel or, as the case may be, of the Board are to take place by live link.

(2) A panel or, as the case may be, the Board may arrange for its proceedings, or any part of its proceedings, in relation to a case to take place by in-person attendance, either on its own motion or on the application of a party under this Rule.

(3) An application under paragraph (2) in relation to a preliminary hearing or to an oral hearing under Part 4 is to be made within 5 working days after the parties are notified of the date of the hearing, or by such later date as the panel or the Board may authorise.

(4) Before determining an application under paragraph (2), the panel or the Board must give the parties the opportunity to make representations and must consider those representations.

(5) The panel or the Board must give the parties written notice of its decision no later than 5 working days (or such shorter time as the parties may agree) before the hearing to which the application relates.

(6) In this rule—



“in-person attendance” means the attendance at a specified place of any or all of the members of the panel or Board involved in the proceedings, the parties, and any other person authorised or required to attend a hearing.

“live link” means any arrangement by which any or all of the members of the Board or the panel involved in the proceedings, the parties, and any other person authorised or required to attend a hearing are able to—

(a) be seen and be heard, or be heard, in the proceedings,

(b) see and hear, or hear, the proceedings,

while not present in the same place.

### **Exercise of functions**

**17.**—(1) Where the chairperson of a panel is unable for any reason to exercise a function conferred on them by these Rules, the function may be exercised instead by the chairperson of the Board.

(2) Where a function which is conferred by this Part on the Board is exercised by a panel by virtue of rule 7(1), that does not prevent the Board exercising that function.

### **Correction of irregularities and errors**

**18.**—(1) Any irregularity in the proceedings of a panel or, as the case may be, the Board resulting from failure to comply with any provision of these Rules or of any direction under these Rules does not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of a panel or, as the case may be, the Board before a decision has been reached in relation to a case, the panel chairperson or the chairperson of the Board—

(a) must, if they consider that any person may have been prejudiced by the irregularity, and

(b) may, in any other case,

give such directions as appear to them to be appropriate to address the irregularity.

(3) Where a document recording a decision under these Rules contains a mistake (including a clerical or factual error or omission or another accidental inaccuracy), the chairperson of the Board, or of the panel which made the decision in question, may issue a written correction slip to correct the mistake.

### **Reconsideration of panel decisions**

**19.**—(1) Subject to paragraph (2) the decision of a panel in relation to a case may be reconsidered under this Rule.

(2) This Rule does not apply to a decision to recommend or direct that the person concerned be released or re-released.

(3) The chairperson of the Board, (or another member or members appointed by the chairperson for that purpose) may select a decision for reconsideration where they consider there is or may be an administrative or procedural defect affecting that decision.

(4) A decision may only be selected for reconsideration within 20 working days following the date on which that decision is notified to the parties.

(5) Where a decision is selected for reconsideration, the chairperson of the Board is to make such arrangements for that reconsideration as appear to be necessary in the interests of justice and having regard to the reason the decision was selected.

- (6) The arrangements may include, but are not limited to—
- (a) remitting the case to the panel which previously considered the case for a new decision,
  - (b) appointing a panel consisting of different members of the Board to consider the case and reach a new decision.

(7) Where a case is reconsidered under the procedure in Part 3 of these Rules, rule 22 applies to a new decision reached following that reconsideration as it applies to any other decision of a casework panel under that procedure.

(8) Where a case is reconsidered under the procedure in Part 4 of these Rules, rules 33 and 34 apply to a new decision reached following that reconsideration as they apply to any other decision of an oral hearing panel under that procedure.

## PART 3

### Procedure for cases to be determined by casework panel

#### General procedure of casework panel

**20.**—(1) Other than as provided for under these Rules, a casework panel may regulate its own procedure for considering a case under this Part.

- (2) A casework panel is to consider, in relation to a case—
- (a) the dossier information,
  - (b) any representations made by the person concerned under rule 10,
  - (c) any representations made by a victim or family member of a victim,
  - (d) any representations made by a family member of the person concerned, and
  - (e) any other information or documents provided to the panel.

(3) In this rule, “victim” means any victim of the offence for which the person concerned’s current sentence was imposed.

#### Information for casework panel consideration of case

**21.** A casework panel may request information or documents from any person in relation to a case to be considered by the panel.

#### Decision of casework panel

- 22.**—(1) A casework panel of 2 members must reach a decision by unanimous agreement.
- (2) If a decision cannot be reached unanimously, a third member is to be appointed to the panel.
- (3) A casework panel of three members must reach a decision by majority.
- (4) The decision must be recorded in a document (a “decision minute”) which includes—
- (a) the reasons for the decision,
  - (b) the date of the decision,
  - (c) in the case of a panel of three members, whether the decision was unanimous or reached by majority.

(5) The decision minute must be sent to the parties not later than 10 working days after the date of the panel’s decision.

## PART 4

### Procedure for cases to be determined by an oral hearing panel

#### General procedure of oral hearing panel

**23.**—(1) Subject to the provisions of these Rules, an oral hearing panel may regulate its own procedure for the purpose of a case to be determined under this Part.

(2) A case to which this Part applies is to be determined following an oral hearing in accordance with this Part, unless the parties and the panel agree that the case may be determined without an oral hearing.

#### Directions

**24.**—(1) The chairperson of an oral hearing panel must consider the need for directions to be made under this rule in respect of a case and may make, vary, or revoke such directions, including directions in respect of —

- (a) the timetable for the proceedings,
- (b) the variation of any time specified in these Rules which would otherwise apply to the case,
- (c) the service of documents,
- (d) the submission of evidence.

(2) Directions under this rule may be made, varied or revoked either on the chairperson's own motion, or on the written application of a party.

(3) A direction must not be made, varied or revoked unless both parties have been notified of the proposed direction and given an opportunity to make representations on the direction.

(4) Representations mentioned in paragraph (3) may be made in writing or at a preliminary hearing.

#### Date and notice period of oral hearing

**25.**—(1) Subject to paragraph (2), and unless the parties otherwise agree to a shorter period, the oral hearing panel must give the parties and any person authorised to attend a hearing under rule 26, 27(3), 29 or 30 not less than 15 working days' notice of the date and time at which the hearing will be held, together with such other information about the hearing as is necessary to enable those persons to attend the hearing.

(2) Unless the parties otherwise agree, the oral hearing must take place no earlier than 15 working days after the expiry of the period during which the person concerned may submit written representations under rule 10.

(3) The chairperson of the panel may vary any notice provided under paragraph (1) to provide for the oral hearing to take place on a later date, and must give the persons notified under that paragraph at least 5 working days' notice of the replacement date.

(4) The panel may adjourn an oral hearing and—

- (a) in a case where the date, time and place for the hearing to continue are announced before the adjournment, no further notice will be required,
- (b) in any other case, the panel must give the persons notified under paragraph (1) no less than 5 working days' notice of the date, time and place for the hearing to continue.

### **Representation of parties at oral hearing**

26.—(1) Subject to this rule, any person authorised by a party for that purpose may represent a party at an oral hearing.

(2) A party wishing to be represented at an oral hearing must give written notice of the name, address and occupation of the person they intend to authorise for that purpose to the oral hearing panel and to the other party.

(3) The written notice under paragraph (2) must be provided before the expiry of the period during which the person concerned may submit written representations under rule 10.

(4) The panel may refuse to permit a person to represent a party if it considers there are good and sufficient reasons for doing so.

(5) Where the person concerned does not authorise a representative under paragraph (1)—

- (a) the panel may, if the person concerned has agreed, appoint a representative to act on the person's behalf for the purposes of the oral hearing, or
- (b) if the panel considers that the person concerned lacks capacity to agree to an appointment under sub-paragraph (a) the panel may make such arrangements as the panel considers appropriate to secure that representation.

(6) Where the panel is considering making arrangements under paragraph (5)(b), it may seek information, recommendations or reports from such persons as appear to it to be suitably qualified or experienced in the field of mental capacity and mental welfare to assist with the panel's appointment of a representative.

### **Attendance at oral hearing**

27.—(1) An oral hearing under this Part is to be held in private.

(2) The people who may attend an oral hearing are—

- (a) a member of the oral hearing panel,
- (b) a clerk to the panel,
- (c) a party to the case,
- (d) a representative of a party,
- (e) any person required to attend under rule 28,
- (f) any person authorised to attend under rule 29,
- (g) any victim authorised to attend under rule 30 or a support person attending under that rule.

(3) The panel may also at any time authorise any person, other than a person to whom rule 30 applies, to attend a hearing for such purpose and on such terms and conditions as the panel considers appropriate.

### **Citation of persons to attend oral hearing**

28.—(1) For the purposes of requiring any person to attend an oral hearing under this Part to give evidence, or to produce information or documents, the provisions of subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973(15) apply as if—

- (a) references to a local inquiry were references to such a hearing,

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(15) 1973 c. 65. Subsection 210(5) was amended by virtue of sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), as inserted by the Criminal Justice Act 1983 (c. 48), section 54. The standard scale is as provided for in section 225(2) of the Criminal Procedure (Scotland) Act 1995 (c. 46).

- (b) references to the person appointed to hold the inquiry, or the person holding the inquiry, were references to the panel chairperson,
  - (c) the reference to “this section” in subsection (5) of section 210 were a reference to this rule, and
  - (d) in subsection (5) for “not exceeding level 1” to the end, there were substituted “not exceeding level 2”.
- (2) The panel chairperson may, subject to this Rule, exercise the powers conferred by paragraph (1) to require any person to attend to give evidence or to produce any information or other documents—
- (a) on the application of a party, or
  - (b) as otherwise agreed by the panel.
- (3) A party making an application under paragraph (2)(a) —
- (a) must send that application to the panel not later than the expiry of the period within which the person concerned may submit written representations under rule 10,
  - (b) must include in the application the name and address of each person in respect of whom the application is made,
  - (c) must send a copy of that application to the other party at the same time as sending it to the panel.
- (4) The panel chairperson may grant or refuse an application made under paragraph (2) and must give each party notice in writing of that decision and, where the application is refused, of the reasons for that decision.
- (5) Where a written notice requiring a person to attend an oral hearing is made by virtue of this rule, that notice must—
- (a) be signed by the panel chairperson,
  - (b) include an explanation of the reason why the person is required to attend the oral hearing,
  - (c) be sent by the Board to that person (and a copy sent to each party) as soon as practicable.

### **Other persons accompanying the person concerned**

- 29.**—(1) The person concerned may apply in writing to the oral hearing panel to authorise a person or persons to accompany them at the oral hearing as a support person or persons.
- (2) An application under paragraph (1) must be made not later than the expiry of the period during which the person concerned may submit written representations under rule 10.
- (3) The application must include the name, address and occupation of each proposed support person, and a statement of the reasons why the person concerned wishes to be accompanied by them.
- (4) When an application is made under paragraph (1), the person concerned must at the same time send a copy of that application to the other party.
- (5) The chairperson of the panel may grant or refuse an application under paragraph (1) and must give each party written notice of that decision and, where the application is refused, of the reasons for that decision.

### **Observation of oral hearing by victim**

- 30.**—(1) This rule applies to indeterminate cases only.
- (2) A registered Part 2 victim (a “registered victim”) in relation to a case to which this rule applies may attend an oral hearing under this Part for the purpose of observing proceedings if authorised to do so under this rule.

(3) The registered victim must apply in writing to the Board to be authorised to attend the hearing.

(4) An application mentioned in paragraph (3) must be made during the period intimated to the registered victim by the Board for the purpose of making the application or, if applicable, during such extended period as may be agreed by the Board.

(5) On receipt of an application under this rule, the Board must inform the parties that the application has been made, and must provide an opportunity for the parties to make representations about the application.

(6) The chairperson of the panel may grant or refuse an application under paragraph (3), and must send the registered victim and the parties a written notice of the decision which includes the reasons for the decision.

(7) A registered victim authorised to attend a hearing under this rule may be accompanied at the oral hearing by one other person (or such greater number as the chairperson of the panel may agree), for the purpose of support, and must provide the panel with the name and contact details of the support person or persons not later than 5 working days before the date of the oral hearing.

(8) Attendance at an oral hearing under this rule is to be by live link unless the panel considers that another means of attendance is required and is in the interests of justice.

(9) The panel may at any time exclude a registered victim or a support person mentioned in paragraph (7) from any part of the oral hearing.

(10) In this rule—

“live link” means any arrangements by which a person authorised under this rule is able to see and hear, or hear, the proceedings while not present at the place where the case is being held,

“registered Part 2 victim” means a person who has—

- (i) intimated under section 17(2) of the Criminal Justice (Scotland) Act 2003<sup>(16)</sup> that they wish to be afforded the opportunity to make representations in respect of decisions to release a convicted person on licence, or
- (ii) intimated under section 17(11) of that Act that they wish to receive information under that section.

### **Written statement of preparation**

**31.**—(1) Not later than 10 working days before the date of the oral hearing, the person concerned (or their representative) must send the panel a statement indicating the extent to which that person is prepared for the oral hearing.

(2) The chairperson of the panel must consider the information provided under paragraph (1) as soon as practicable after it is received and, if the chairperson considers that it is necessary in order to enable the person concerned to be better prepared for the oral hearing, the chairperson may postpone the hearing.

(3) Where an oral hearing is postponed under paragraph (2), the requirement in paragraph (1), and any requirements in other provisions of this Part, apply as if the reference to the date of the hearing was a reference to the postponed hearing date.

### **Procedure at oral hearing**

**32.**—(1) At the beginning of an oral hearing, the chairperson of the panel must explain the order of proceeding which the panel proposes to adopt at the hearing.

(2) The panel must, as far as possible, avoid formality in the proceedings.

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(16) 2003 asp 7.

- (3) At an oral hearing, the parties are—
  - (a) to be heard either in person or through their representative,
  - (b) to hear each other’s evidence and to put questions to each other and to any person called by the other party,
  - (c) to call any person who has been cited under rule 28 to give evidence or provide any document, and
  - (d) to make submissions to the panel.
- (4) Any member of the panel is entitled to put questions to any party or representative or any person giving evidence.
- (5) Without prejudice to any other powers it may have, the panel may exclude from the oral hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the panel, to disrupt the oral hearing.
- (6) The panel may consider any document or information notwithstanding that it would be inadmissible in proceedings before a court of law but no person may by virtue of these Rules be compelled to give any evidence or to produce any document which that person could not be compelled to give or produce in proceedings before a court of law.

#### **Decision of oral hearing panel**

- 33.**—(1) An oral hearing panel of 3 members may reach its decision by majority.
- (2) Where a panel composed of 2 members cannot reach a unanimous decision, 3 different members must be appointed to form a new panel for the purpose of dealing with the case.
- (3) The decision must be recorded in a document (a “decision minute”) which includes—
  - (a) the reasons for the decision,
  - (b) the date of the decision,
  - (c) in the case of a panel of three members, whether the decision was unanimous or by majority.
- (4) Where the case relates to a person in respect of whom a risk management plan has been prepared and provided to the Board, and where the panel’s decision is different in any respect from the recommendations in that plan, the reasons provided under paragraph (3)(a) must include an explanation of the reasons for that difference.
- (5) The decision minute must be sent to the parties not later than 10 working days after the end of the oral hearing.

#### **Publication of decision summary**

- 34.**—(1) This rule applies to indeterminate cases only.
- (2) Where the oral hearing panel’s decision on the case is a decision to direct that the person concerned is released, the panel must publish, in such manner as it may determine, a summary of the reasons for that decision.
- (3) Where the panel’s decision on the case is not one mentioned in paragraph (2), the panel may publish, in such manner as it may determine, a summary of the reasons for that decision.
- (4) A summary published under this rule must not include information which identifies, or could be used to identify, any person involved in the proceedings.
- (5) In publishing a summary under this rule, the panel may withhold information about the reasons for the decision if it considers that publication of the information would be contrary to the public interest or the interests of justice.

(6) Before publishing a summary under this rule, the panel must send a copy of the summary to any registered Part 2 victim in relation to the case, and may send a copy to any registered Part 1 victim who so requests.

(7) In this rule—

“registered part 1 victim” means a person who has intimated under section 16(1) of the Criminal Justice (Scotland) Act 2003<sup>(17)</sup> that they wish to receive information about the release of an offender, and

“registered part 2 victim” has the same meaning as in rule 30.

## PART 5

### Revocation, transitional and savings provision

**35.**—(1) Subject to paragraphs (3),(4) and (5), the instruments listed in schedule 2 are revoked.

(2) Subject to paragraph (5), where a case has been referred to the Board before 1 April 2023, but a decision has not been made in respect of that case, these Rules apply to that case as if it had been referred on or after that date.

(3) Where these Rules apply to a case by virtue of paragraph (2)—

(a) anything done under the Parole Board (Scotland) Rules 2001<sup>(18)</sup> (“the 2001 Rules”) in relation to the case is to be treated as if it was done under these Rules,

(b) the Board or, as the case may be, the panel considering the case may, if it determines that it is necessary in the interests of justice—

(i) vary any requirement of these Rules, or

(ii) determine instead that the case should continue to be dealt with under the 2001 Rules.

(4) Anything done by the Board or a panel under paragraph (3)(b) must be recorded in the decision minute in relation to the case.

(5) The instruments listed in schedule 2 continue to apply for the purpose of a case to which paragraph (3)(b)(ii) applies.

St Andrew’s House,  
Edinburgh  
20th December 2022

*KEITH BROWN*  
A member of the Scottish Government

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<sup>(17)</sup> 2003 asp 7; section 16(1) has been amended by the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 27 and by S.S.I. 2008/185.

<sup>(18)</sup> S.S.I. 2001/315, as amended by S.S.I. 2010/164; S.S.I. 2011/133; S.S.I. 2012/167; S.S.I. 2012/197; S.I. 2013/2042; S.S.I. 2021/4 and S.S.I. 2022/10.



## SCHEDULE 1

Rule 5

### Dossier information

1. A cover note including—
  - (a) the full name, date of birth, and prisoner number of the person concerned,
  - (b) where applicable, the place in which the person concerned is detained, and other places in which that person has been detained,
  - (c) the person's current sentence or sentences and an indication of the circumstances of the offence or offences for which that sentence or those sentences were imposed, and
  - (d) any significant dates in relation to the current sentence or sentences, including where applicable the parole qualifying date, the earliest day of liberation, the licence end date, the sentence end date, the dates of any recall or revocation of the person's licence, and the duration and date of expiry of any punishment part.
2. A record of any other offences of which a court has found the person concerned guilty, together with a note of the sentence or other disposal ordered on such findings.
3. A document setting out the sentence calculation applicable to the current sentence or sentences.
4. A copy of any report on the person concerned made while the person was subject to a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(19)</sup>.
5. Up-to-date reports by those involved in supervising, caring for or counselling the person concerned, relating to that person's circumstances (including home background), behaviour, and suitability for release or, as the case may be, re-release on licence.
6. In a case where a risk management plan is required to be prepared a copy of the most recent risk management plan in respect of the person concerned, together with any available supplementary information about that plan.
7. In an indeterminate case—
  - (a) a copy of the judgement of the Sheriff Appeal Court or the High Court on any appeal by the person concerned against the current sentence or sentences or the convictions on which that sentence was, or those sentences were, imposed,
  - (b) a copy of any trial judge report in relation to the case,
  - (c) a copy of any written notice provided by the person concerned indicating that the person does not wish their case to be considered by the Board, and
  - (d) where that case has previously been considered by the Board—
    - (i) a copy of each written decision issued by the Board about the case, and
    - (ii) a copy of any information, documents or reports provided in a previous dossier, which are referred to in the present dossier information or which otherwise appear to remain relevant to the case.

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<sup>(19)</sup> 2003 asp 13. As amended by the Mental Health (Scotland) Act 2015 asp 9, sections 12(2) and 34(2).

## SCHEDULE 2

Rule 35

## Revocations

1. The Parole Board (Scotland) Rules 2001**(20)**
2. The Parole Board (Scotland) Amendment Rules 2010**(21)**.
3. The Parole Board (Scotland) Amendment Rules 2011**(22)**.
4. The Parole Board (Scotland) Amendment Rules 2012**(23)**.
5. The Parole Board (Scotland) Amendment (No. 2) Rules 2012**(24)**.
6. The Parole Board (Scotland) Amendment Rules 2021**(25)**.
7. The Parole Board (Scotland) Amendment Rules 2022**(26)**.

**EXPLANATORY NOTE***(This note is not part of the Rules)*

These Rules make provision with respect to the proceedings of the Parole Board for Scotland (“the Board”). The Rules apply to all cases referred to the Board from 1 April 2023.

Part 1 of the Rules contains introductory provisions including provision in rule 2 defining terms used in the Rules.

Part 2 makes general provision applicable to the proceedings of the Board in all cases referred to it by the Scottish Ministers (except where otherwise provided). Rules 4 and 5 make provision as to information to be provided to the Board and to the person to whom the case relates by the Scottish Ministers. Schedule 1 also sets out a list of such information to be provided as the Scottish Ministers’ dossier in relation to a case. Rules 6 and 7 make provision as to the procedure applying to individual cases and the allocation of members of the Board to a panel to consider a case. Rules 8, 9, and 10 make provision for preliminary hearings, consideration of information which is not to be disclosed to the person to whom the case relates, and the making of written representations by that person to the Board. Rules 11 and 12 detail particular matters which the Board may consider in relation to a case, where relevant. These provisions do not override statutory tests to be applied by the Board in particular cases, but indicate some of the matters which may be relevant to those tests. Rules 13, 14, 15 and 16 make general provision as to the conduct of parole proceedings such as in respect of confidentiality and the sending of documents. Rule 18 provides for the correction of procedural and administrative irregularities, and rule 19 sets out the circumstances in which the Board may reconsider a decision made by a panel in relation to a case.

Part 3 sets out the procedure which is to apply where a case is, by virtue of rule 6, to be considered by reference to the case papers only (i.e. by a “casework” panel). Provision is made as to the documents

**(20)** [S.S.I. 2001/315](#).

**(21)** [S.S.I. 2010/164](#), as amended by [S.I. 2013/2042](#).

**(22)** [S.S.I. 2011/133](#).

**(23)** [S.S.I. 2012/167](#), as amended by [S.S.I. 2012/197](#).

**(24)** [S.S.I. 2012/197](#).

**(25)** [S.S.I. 2021/4](#).

**(26)** [S.S.I. 2022/10](#).

to be considered and the manner in which a decision may be reached. Other than in respect of these matters a casework panel may, by virtue of rule 20(1), regulate its own procedure.

Part 4 sets out the procedure which is to apply where a case is to be considered at an oral hearing. This relates to indeterminate cases (as defined in rule 2), and to any other case where (under Rule 6) it has been determined that an oral hearing is in the interests of justice. It is also possible for an indeterminate case to be considered under Part 4 by an oral hearing panel but without an oral hearing taking place, by virtue of Rule 23(2). For such cases, and for any other matter relating to a case not provided for in the Rules, an oral hearing panel may determine its own procedure, by virtue of rule 23(1). Part 4 includes provision as to the practical arrangements to be made for an oral hearing such as procedural directions, notice periods, representation of parties and citation of witnesses (rules 24, 25, 26, 27, 28 and 29). Rule 30 makes provision for oral hearings in relation to indeterminate cases to be observed by victims. Rule 31 sets out information to be provided by the person to whom the hearing relates, in advance of the hearing, to determine the extent to which they are prepared for the hearing. Rule 32 makes provision for the conduct of an oral hearing. Rule 33 sets out how the decision of an oral hearing panel is to be reached and communicated to parties, and rule 34 makes provision as to the publication of decision summaries in respect of indeterminate cases.

Part 5 (rule 35) and schedule 2 provide that the Parole Board (Scotland) Rules 2001 (and instruments amending those Rules) are revoked from 1 April 2023 and make transitional provision for cases under consideration by the Board at that date. Such cases are, in general, to be completed under these new Rules unless the Board considers this would be contrary to the interests of justice. Rule 35(5) therefore also provides that the 2001 Rules (and amending instruments) remain in effect for any such case.

An Equality Impact Assessment has been prepared in respect of these Rules and placed in the Scottish Parliament Information Centre. Copies may be obtained online at [www.legislation.gov.uk](http://www.legislation.gov.uk).