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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 315**

**PRISONS**

**The Parole Board (Scotland) Rules 2001**

*Made* - - - - - *13th September 2001*  
*Laid before the Scottish*  
*Parliament* - - - - - *14th September 2001*  
*Coming into force* - - - - - *8th October 2001*

The Scottish Ministers, in exercise of the powers conferred by section 20(4) and (4A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Rules:

**PART I**

**INTRODUCTION**

**Citation, commencement and application**

1.—(1) These Rules may be cited as the Parole Board (Scotland) Rules 2001 and shall come into force on 8th October 2001.

(2) These Rules shall apply to every case referred by the Scottish Ministers to the Parole Board on or after 8th October 2001.

**Interpretation**

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

“the 1989 Act” means the Prisons (Scotland) Act 1989<sup>(2)</sup>;

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

“the 2001 Act” means the Convention Rights (Compliance) (Scotland) Act 2001<sup>(3)</sup>;

“the 1993 Rules” means the Parole Board (Scotland) Rules 1993<sup>(4)</sup>;

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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 by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) (“the 2001 Act”), section 5(1)(c); section 20(4A) was inserted by the 2001 Act, section 5(1)(c); the functions conferred on the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of Scotland Act 1998 (c. 46).

(2) 1989 c. 45.

(3) asp 7.

(4) S.I.1993/2225, amended by S.I.s 1997/2317, 1998/1904 and 1999/1116.

“the 1995 Rules” means the Parole Board (Scotland) Rules 1995(5);

“the Board” means the Parole Board for Scotland and includes, in relation to any case which is authorised by rule 14(2), 15(3) or 18(1) to be dealt with, in whole or in part, by a specified number of members of the Board, those members and any tribunal formed by those members under rule 18;

“case” means any case relating to a person which the Board is to consider or is considering and, in any Part of these Rules, means a case to which that Part applies;

“the chairman of the Board” means the chairman of the Board appointed under paragraph 1 of Schedule 2 to the 1993 Act but does not include the chairman of a tribunal;

“the chairman of a tribunal” means the chairman of a tribunal appointed under rule 18(4);

“damaging information” shall be construed in accordance with rule 6(1);

“Part IV case” means a case to which Part IV of these Rules applies by virtue of rule 17;

“parties”, in relation to a Part IV case, means the Scottish Ministers and the prisoner;

“person concerned”, in relation to a case, means the person to whom the case relates;

“prisoner” in relation to a Part IV case, means—

- (a) a person sentenced by a court in Scotland to life imprisonment, or to detention without limit of time, or for life;
- (b) a prisoner to whom section 10 or 10A of the 1993 Act, or Part 4 or 5 of the Schedule to the 2001 Act, applies;
- (c) a prisoner subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995(6) who has been recalled to custody under section 17(1) of the 1993 Act; and

“tribunal” means a tribunal formed under rule 18.

(2) Any reference in these Rules to a numbered rule or to a numbered Schedule means, unless the context otherwise requires, a reference to the rule or the Schedule bearing that number in these Rules and any reference in a rule to a numbered paragraph means, unless the context otherwise requires, a reference to that paragraph bearing that number in that rule.

## PART II

### GENERAL

#### Application

3.—(1) Subject to paragraph (2) and except where otherwise expressly provided, this Part of these Rules shall apply to every case referred by the Scottish Ministers to the Parole Board.

(2) In the application of this Part of the Rules to a case where the Board is to consider, or is considering, whether to recommend the revocation of a person’s licence and his or her recall to prison under section 28(1) of the 1989 Act or section 17(1) of the 1993 Act—

- (a) rules 4 and 7 shall not apply; and
- (b) in rule 5(1), the Scottish Ministers shall not be required—

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(5) S.I. 1995/1273, amended by S.I. 1998/1904.

(6) 1995 c. 46.

- (i) to include in the dossier which they send to the Board all the information and documents specified in the Schedule to these Rules but only such as may be available to them at the time when they send the dossier to the Board; or
- (ii) to send the dossier to the person concerned.

## **Reference**

4. Where a case of a person is referred to the Board by the Scottish Ministers, the Scottish Ministers shall, at the same time as referring the case, give written notification of that reference to that person.

## **Scottish Ministers' dossier**

5.—(1) Subject to paragraph (2) and rule 6, not later than 2 weeks after the date of the reference of the case to the Board, the Scottish Ministers shall send to the Board and to the person concerned a dossier containing any information in writing or documents which they consider to be relevant to the case, including, wherever practicable, the information and documents specified in the Schedule to these Rules.

(2) In relation to a Part IV case which is referred to the Board immediately following the making of an order under paragraph 12 or 59 of the Schedule to the 2001 Act, paragraph (1) shall apply as if there were substituted for the reference to 2 weeks a reference to 12 weeks.

## **Non disclosure of information**

6.—(1) This rule applies where—

- (a) the Scottish Ministers consider that any written information or document contained in a dossier sent to the Board under rule 5 or otherwise given to the Board by them; or
- (b) the Board considers that any other written information or document obtained by it,

should not be sent or disclosed to the person concerned because its disclosure would be likely to be damaging on one or more of the following grounds, namely:—

- (i) that it would be likely adversely to affect the health, welfare or safety of that person or any other person;
- (ii) that it would be likely to result in the commission of an offence;
- (iii) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;
- (iv) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- (v) that it would be likely otherwise to damage the public interest;

and any such information or document is referred to in these Rules as “damaging information”.

(2) Where this rule applies—

- (a) the Scottish Ministers or, as the case may be, the Board shall not be required to send a copy of the damaging information to the person concerned whether under rule 5 or otherwise;
- (b) the Board may take such damaging information into account even although it has not been disclosed to the person concerned; and
- (c) the Scottish Ministers or, as the case may be, the Board shall send to the person concerned a written notice—

- (i) informing him or her that certain information which has been sent to or obtained by the Board has not been sent to him or her because the Scottish Ministers or, as the

case may be, the Board considers that the disclosure of that information would be likely to be damaging on one or more of the grounds mentioned in paragraph (1) which is or are specified in the notice;

- (ii) giving that person, but only so far as is practicable without prejudicing the purposes for which the information is not disclosed, the substance or gist of the damaging information,

and, where this rule applies by virtue of paragraph (1)(a) above, the Scottish Ministers shall send a copy of that written notice to the chairman of the Board.

- (3) This rule does not apply in a Part IV case.

### **Representations**

7.—(1) A person shall have the right to submit written representations with respect to his or her case together with any other information in writing or documents which he or she considers to be relevant to his or her case and wishes the Board to take into account, following receipt of the dossier under rule 5(1), any other information sent to him or her by the Scottish Ministers or the Board or any written notice under rule 6(2).

(2) Any such representations shall be sent to the Board and the Scottish Ministers within four weeks of the date on which the Scottish Ministers or, as the case may be, the Board sent to the person the dossier, information or written notice referred to above.

(3) In a case where the person has a right to submit written representations following receipt of a written notice, the representations may include any representations about the non disclosure of any damaging information.

### **Matters to be taken into account by the Board**

8. In dealing with a case of a person, the Board may take into account any matter which it considers to be relevant, including, but without prejudice to the foregoing generality, any of the following matters:—

- (a) the nature and circumstances of any offence of which that person has been convicted or found guilty by a court;
- (b) that person's conduct since the date of his or her current sentence or sentences;
- (c) the risk of that person committing any offence or causing harm to any other person if he or she were to be released on licence, remain on licence or be re released on licence as the case may be; and
- (d) what that person intends to do if he or she were to be released on licence, remain on licence or be re released on licence, as the case may be, and the likelihood of that person fulfilling those intentions.

### **Confidentiality**

9. Any information—

- (a) in connection with the proceedings before the Board or, in a Part IV case, a tribunal in dealing with a case;
- (b) about any application, document or written or oral information given to the Board or to the tribunal; or
- (c) about the name of any person concerned in the proceedings,

shall not be disclosed, either directly or indirectly, to any person not involved in those proceedings or to the public, except—

- (i) insofar as the chairman of the Board or, in a Part IV case, the chairman of the tribunal otherwise direct; or
- (ii) in connection with any court proceedings.

### **Time**

**10.**—(1) Where the time appointed by or under these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act shall be done in time if done on the next day which is not a Saturday, Sunday or public holiday.

- (2) Any time appointed by or under these Rules for the doing of any act may be varied—
  - (a) in relation to a Part IV case, by the chairman of the tribunal under rule 17(2) or 19(2); and
  - (b) in relation to any other case, by the Board on an application made to it for that purpose.

### **Sending of documents etc.**

**11.** Any application, document, or other written material which is required or authorised by these Rules to be made, served, given, sent or otherwise transmitted to any person may be sent by facsimile transmission, pre-paid post or delivered—

- (a) in the case where the intended recipient of the application, document or other written material is the Board, tribunal or chairman of a tribunal, to the office of the Board; and
- (b) in any other case, to the last known address of the intended recipient.

### **Irregularities**

**12.**—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction under these Rules shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Board or, in a Part IV case, the tribunal, the Board or, as the case may be, the tribunal may, and shall, if it considers that any person may have been prejudiced by that irregularity, give such directions as it thinks fit before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a decision of the Board or, in a Part IV case, the tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairman of the Board, or, as the case may be, the chairman of the tribunal, by certificate under his hand.

## **PART III**

### **PROVISIONS APPLYING TO NON TRIBUNAL CASES**

#### **Application**

**13.** This Part of these Rules applies to any case referred to the Parole Board, other than a Part IV case.

#### **Composition of Board**

**14.**—(1) Subject to the following paragraphs and rule 15(3), the powers of the Board may be exercised by any 3 members of the Board.

(2) Without prejudice to rule 15(3), any case may be dealt with, in whole or in part, by any 3 members of the Board who are appointed by the chairman of the Board for the purposes of dealing with that case, in whole or in part.

(3) The powers of the Board under rule 6(1) to decide that any written information or document should not be sent or disclosed to a person shall be exercised by the chairman of the Board or such member as may be appointed by him for that purpose.

(4) No member of the Board who took part in making a recommendation under section 28(1) of the 1989 Act in relation to a person shall deal with that person's case under section 28(4) of that Act.

(5) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a person shall deal with that person's case under section 17(3) of that Act.

### **Procedure**

**15.**—(1) Subject to the provisions of these Rules, the Board may regulate its own procedure in dealing with any case.

(2) The Board shall deal with any case on consideration of—

- (a) any written information, documents or written representations which the Scottish Ministers or the person concerned have sent to it under rule 5 or 7;
- (b) any report of an interview conducted under paragraph (3); and
- (c) any other information obtained by it under paragraph (4) or otherwise.

(3) The person concerned shall be entitled to request an interview with the Board before it reaches a decision, and—

- (a) where he or she does so; or
- (b) where the Board considers it desirable to interview that person or any other person, the chairman of the Board may authorise one or two members of the Board to conduct such an interview and to make a report thereon to the Board.

(4) In dealing with any case, the Board may request and consider information from any person and in any form.

(5) Subject to rule 6, the Board shall send to the person concerned a copy of any information obtained by it under paragraph (4) or otherwise which it considers to be relevant to the case.

### **Decision**

**16.** The decision of the Board may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority;

Provided that, where the Board is constituted by an even number of members, the chairman of the Board or other presiding member shall have a second or casting vote.

## **PART IV**

### **PROVISIONS APPLYING TO TRIBUNAL CASES**

#### **Application**

**17.**—(1) Subject to paragraph (2), this Part of these Rules applies to the case of any prisoner which is referred to the Board by the Scottish Ministers under section 28(4) of the 1989 Act or sections 2(5)(a), (5B), (5C) or (6), 3A(2), or 17(3) of the 1993 Act or under paragraphs 34, 38 or 42 of the Schedule to the 2001 Act.

(2) The time appointed by or under these Rules for the doing of any act may, in the case of a prisoner which is referred by the Scottish Ministers under section 28(4) of the 1989 Act, section 17(3) of the 1993 Act or under paragraph 34, 38 or 42 of the Schedule to the 2001 Act, be varied as the chairman of the tribunal shall in each case determine, taking account of both the desirability of the tribunal reaching an early decision in that case and the need to ensure fairness to the parties.

### **Composition of tribunal**

**18.**—(1) Subject to paragraphs (2), (3) and (4) below, any case may be dealt with, in whole, by 3 members of the Board who are appointed by the chairman of the Board to form a tribunal for the purpose of dealing with that case.

(2) No member of the Board who took part in making a recommendation under section 28(1) of the 1989 Act in relation to a person shall be appointed by the chairman to deal with that person's case under section 28(4) of that Act.

(3) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a person shall be appointed by the chairman to deal with that person's case under section 17(3) of that Act.

(4) The members of a tribunal appointed under paragraph (1) shall include either—

- (a) a person who holds or who has held judicial office; or
- (b) a solicitor or advocate of not less than 10 years standing;

and the chairman of the Board shall appoint that person to be chairman of the tribunal.

(5) In the event of the death or incapacity or unavailability (for whatever reason) of any member of a tribunal ("the absent member")—

- (a) before the hearing has commenced, the chairman of the Board shall, subject to paragraphs (2), (3) and (4), appoint another member of the Board in the place of the absent member; or
- (b) after the hearing has commenced, the case may continue to be dealt with by the 2 remaining members of the tribunal, if the absent member is a member other than the chairman of the tribunal and with the consent of the parties, but if this does not occur, the chairman of the Board shall, subject to paragraphs (2), (3) and (4) appoint another member of the Board in place of the absent member and the hearing shall be recommenced.

### **General procedure**

**19.**—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure for dealing with a case.

(2) Subject to paragraph (3), the chairman of the tribunal may give, vary or revoke directions for the conduct of the case, including directions in respect of—

- (a) the timetable for the proceedings;
- (b) the varying of the time within which or by which an act is required, by these Rules, to be done;
- (c) the service of documents; and
- (d) the submission of evidence,

and, following his appointment under rule 18(2), the chairman of the tribunal shall consider whether such directions need to be given at any time.

(3) Directions under paragraph (2) may be given, varied or revoked either—

- (a) on the chairman of the tribunal's own motion; or

(b) on the written application of a party to the chairman of the tribunal which has been sent to the other party and which specifies the direction which is sought, but, in either case, both parties shall be given an opportunity to make written representations or, where the chairman of the tribunal thinks it is necessary and subject to paragraph (6), to make oral submissions at a preliminary hearing fixed in accordance with paragraph (4).

(4) Where the chairman of the tribunal decides to hold a preliminary hearing, he shall give the parties at least 14 days' notice of the date, time and place which has been fixed in respect thereof.

(5) A preliminary hearing shall be held in private.

(6) At a preliminary hearing, except insofar as the chairman of the tribunal otherwise directs,

(a) the chairman of the tribunal shall sit alone; and

(b) both parties and their representatives may attend.

(7) The chairman of the tribunal shall take a note of the giving, variation or revocation of a direction under this rule and shall send a copy to both parties as soon as practicable thereafter.

## Hearing

**20.** There shall be an oral hearing of the prisoner's case unless both parties and the tribunal otherwise agree.

## Notice of hearing

**21.**—(1) Subject to paragraph (2), the tribunal shall give the parties not less than 3 weeks' notice of the date, time and place of the hearing or such shorter notice to which the parties may consent.

(2) Unless both parties otherwise agree, the hearing shall not take place earlier than 3 weeks after the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7.

(3) The tribunal may vary any notice given under paragraph (1) and shall give the parties not less than 7 days' (or such shorter time as the parties may agree) notice of any such variation;

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

(4) The tribunal may, from time to time, adjourn the hearing and—

(a) in the case where the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required; and

(b) in any other case, the tribunal shall give the parties not less than 7 days' (or such shorter time as the parties may agree) notice of the date, time and place of the adjourned hearing.

## Representative

**22.**—(1) Subject to paragraph (3), each party may be represented at the hearing by any person whom he or she has authorised for that purpose.

(2) Not later than the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7, a party shall give the tribunal and the other party written notice of the name, address and occupation of any person authorised in accordance with paragraph (1).

(3) The tribunal may refuse to permit a person to represent a party at the hearing, if it is satisfied that there are good and sufficient reasons for doing so.

(4) Where a prisoner does not authorise a person to act as his or her representative, the tribunal may, with his or her agreement, appoint someone to act on his or her behalf.

### **Authorisation of persons to attend a hearing to give evidence or to produce documents**

**23.**—(1) Where a party wishes to call any person to attend a hearing under rule 20 and to give evidence thereat, or to produce documents which relate to any matter in question at such a hearing, he or she shall not later than the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7, make a written application to the tribunal to authorise that person to attend the hearing to give evidence or to produce documents.

(2) Any application under paragraph (1) shall give the name, address and occupation of each person in respect of whom the application is made and a statement of what the general nature of his or her evidence is likely to be.

(3) Any party who makes an application under paragraph (1) shall, at the same time as the application is made, send a copy of that application to the other party.

(4) The chairman of the tribunal may grant or refuse an application under paragraph (1) and shall give each party written notice of his decision and, where the application is refused, of the reasons for that decision.

### **Citation of persons to attend a hearing to give evidence or to produce documents**

**24.**—(1) For the purposes of requiring any person to attend a hearing under rule 20 and to give evidence thereat, or to produce documents which relate to any matter in question at such a hearing, the provisions of subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973(7) shall apply as if—

- (a) references to a local inquiry were references to such a hearing;
- (b) references to the person appointed to hold the inquiry, or the person holding the inquiry, were references to the chairman of the tribunal;
- (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) Subject to the following paragraphs of this rule, the chairman of the tribunal may at any time exercise the powers conferred on him by paragraph (1) to require any person to attend to give evidence or to produce any books or other documents—

- (a) on the application of a party; or
- (b) where he is authorised by the tribunal to do so on its own motion.

(3) Where a party wishes to make an application for the purposes of paragraph (2) he or she shall, not later than the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7, make a written application to the tribunal.

(4) Any application under paragraph (3) shall give the name and address of each person in respect of whom the application is made.

(5) Any party who makes an application under paragraph (3) shall, at the same time as the application is made, send a copy of that application to the other parties.

(6) The chairman of the tribunal may grant or refuse an application under paragraph (3) and shall give each party written notice of his decision and, where the application is refused, of the reasons for that decision.

(7) Where any written notice requiring any person to attend to give evidence or to produce any books or other documents is made by virtue of this rule, the Board shall—

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(7) 1973 c. 65; section 210(5) was amended by virtue of the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289(f) and 289(g) (as inserted by the Criminal Justice Act 1982 (c. 48), section 54).

- (a) forthwith send the notice signed by the chairman of the tribunal to the person who is named in the notice as the person subject to the requirement specified; and
- (b) send a copy of the notice to each party.

#### **Other persons accompanying a party**

**25.**—(1) Where a party wishes to be accompanied at the hearing by another person or persons, in addition to any representative whom he or she may have authorised or who may have been appointed under rule 22, he or she shall, not later than the expiry of the period within which the prisoner may submit written representations to the tribunal under rule 7, make a written application to the tribunal to authorise that person or persons to accompany him or her at the hearing.

(2) Any application under paragraph (1) shall give the name, address and occupation of the person or persons whom the party wishes to accompany him or her and a statement of the reasons why he or she wishes to be so accompanied.

(3) Any party who makes an application under paragraph (1) shall, at the same time as the application is made, send a copy of that application to the other party.

(4) The chairman of the tribunal may grant or refuse an application under paragraph (1) and shall give each party written notice of his decision and, where the application is refused, of the reasons for that decision.

#### **Attendance at hearing**

**26.**—(1) The hearing shall be held in private.

(2) No person shall be entitled to attend the hearing unless that person is—

- (a) a member of the tribunal;
- (b) the clerk to the tribunal;
- (c) a party;
- (d) a representative of a party;
- (e) any person who is authorised by the chairman of the tribunal to attend the hearing under or by virtue of rule 23 or 25 or paragraph (3) of this rule;
- (f) any person who is required to attend by virtue of rule 24(2)(b);
- (g) any person who is authorised by the tribunal to attend the hearing under paragraph (4) of this rule; or
- (h) a member of the Council on Tribunals or of the Scottish Committee of that Council.

(3) Where the Scottish Ministers or any person responsible for the security of any building in which a hearing takes place consider it desirable that any person or persons should attend the hearing so as to preserve the security of that building or to ensure the safety of any person attending that hearing, he or she may apply at any time to the chairman of the tribunal for that purpose and the chairman of the tribunal may grant or refuse such an application and shall inform each party of his decision and, where the application is refused, of the reasons for that decision.

(4) Notwithstanding rule 23 or 25 or paragraph (3), the tribunal may at any time authorise any person to attend a hearing for such purpose and on such terms and conditions as it considers to be appropriate.

#### **Procedure at hearing**

**27.**—(1) At the beginning of the hearing, the chairman of the tribunal shall explain the order of proceeding which the tribunal proposes to adopt at the hearing.

(2) Subject to this rule, the tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall, so far as appears to it appropriate, seek to avoid formality in the proceedings.

(3) The parties shall be heard in such order as the tribunal may determine and shall be entitled at the hearing—

- (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 (or in the case of the Scottish Ministers, their official or officials attending the hearing) and to any person called by the other party;
- (c) to call any person whom the tribunal has authorised to give evidence or to produce any document in accordance with rule 23; and
- (d) to make submissions to the tribunal,

and any member of the tribunal shall be entitled to put questions to any party or representative or any person giving evidence.

(4) Without prejudice to any other powers it may have, the tribunal may exclude from the hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

(5) The tribunal may consider any document or information notwithstanding that such document or information would be inadmissible in proceedings before a court of law but no person shall by virtue of these Rules be compelled to give any evidence or to produce any document which he or she could not be compelled to give or produce in proceedings before a court of law.

## **Decision**

**28.**—(1) A decision of a tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority;

Provided that, where the tribunal is constituted by 2 members, the chairman of the tribunal shall have a second or casting vote.

- (2) The decision of the tribunal shall be recorded in a document which shall—
- (a) contain a statement of the reasons for the decision;
  - (b) be signed and dated by the chairman of the tribunal; and
  - (c) be sent to the parties not later than 14 days after the end of the hearing.

## **PART V**

### **REVOCATION, TRANSITIONAL AND SAVING PROVISION**

#### **Revocation, saving and transitional provision**

**29.**—(1) Subject to paragraph (2), the 1993 Rules and the 1995 Rules are hereby revoked.

(2) Subject to paragraph (3)—

- (a) the 1993 Rules shall continue to apply to the case of a person referred to the Board before 8th October 2001, and in respect of whom the Board has not before that date made a decision under rule 16 or 27 thereof; and
- (b) the 1995 Rules shall continue to apply to the case of a person referred to the Board before 8th October 2001, and in respect of whom the Board has not before that date made a decision under rule 15 thereof.

(3) Paragraph (2) shall not apply in the case of a person who, before 8th October 2001, is—

- (a) released under section 26(1) of the 1989 Act;
- (b) recalled to prison under section 28(1) of that Act; and
- (c) whose case is referred to the Parole Board under section 28(4) of that Act,

and in respect of whose case the Board has not made a decision under rule 15 of the 1995 Rules before that date.

(4) In the case of a person to whom paragraph (3) applies, anything done under rule 4, 5 or 7 of the 1995 Rules shall, for the purposes of these Rules, be treated as if done under the corresponding rule of these Rules.

St Andrew's House, Edinburgh  
13th September 2001

*JAMES WALLACE*  
A member of the Scottish Executive

## SCHEDULE

Rule 5

### INFORMATION AND DOCUMENTS TO BE SENT BY THE SCOTTISH MINISTERS TO THE BOARD

1. A note of the full name and the date of birth of the prisoner.
2. A note of the place in which the prisoner is detained and other places in which the prisoner has been detained.
3. A note of the prisoner'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.
4. A record of any other offences of which a court has found the prisoner guilty together with a note of the sentence or other disposal ordered on such findings.
5. In a Part IV case—
  - (a) a copy of the judgement of the High Court in any appeal by the prisoner against his current sentence or the conviction on which that sentence was imposed; and
  - (b) a copy of any dossier sent to the Board under rule 5 of these Rules, rule 5 of the 1993 Rules, or rule 5 of the 1995 Rules, in connection with any previous referral of the prisoner's case to the Board which occurred on or after 4th August 1995.
6. A copy of any report on the prisoner made while he was subject to a transfer direction under section 71 of the Mental Health Act 1984(8).
7. Up to date reports by those involved in supervising, caring for, or counselling the prisoner on the prisoner's circumstances (including home background) and behaviour and on his or her suitability for release or, as the case may be, re release on licence.

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### 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").

Part II of the Rules make general provisions which apply to every case except where otherwise expressly provided. They make provision for—

- (a) a dossier of information to be sent by the Scottish Ministers to the Board and, except in the case where the Board is considering whether to recommend the recall of a person who is released on licence (rule 3(2)), to the person concerned (rule 5 and the Schedule);
- (b) certain information not to be disclosed to the person concerned in certain cases (rule 6);
- (c) the person to whom the case relates to make written representations (rule 7);
- (d) the matters which may be taken into account by the Board in dealing with a case (rule 8);
- (e) the confidentiality of proceedings before the Board (rule 9);

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(8) 1984 c. 36.

- (f) certain procedural matters, such as the time, the sending of documents and irregularities (rules 10 12).

Part III of the Rules applies to all cases other than those dealt with under Part IV. They make provision for—

- (a) the composition of the Board in dealing with a case (rule 14);
- (b) the procedure to be followed by the Board (rule 15); and
- (c) the manner in which decisions may be taken by the Board (rule 16).

Part IV of the Rules applies to the case of any life prisoner, and any prisoner who falls to be treated as a life prisoner, and any prisoner subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995 who has been recalled to custody under section 17(1) of the 1993 Act, which is referred to the Board by the Scottish Ministers. They make provision for—

- (a) the composition of the tribunal to deal with the case (rule 18);
- (b) the general procedure to be followed, including, if need be, a preliminary hearing (rule 19);
- (c) a hearing of the case, unless both the Scottish Ministers and the prisoner (“the parties”) and the tribunal otherwise agree (rule 20);
- (d) notice of the hearing (rule 21);
- (e) a party to be represented (rule 22);
- (f) a party to call a person to give evidence or produce documents (rules 23 and 24);
- (g) a party to be accompanied by other persons (rule 25);
- (h) who may attend the hearing (rule 26);
- (i) the procedure at the hearing (rule 27); and
- (j) the manner in which decisions may be taken by the tribunal and notified (rule 28).

Part V of the Rules (rule 29) makes transitional provision and provides for the revocation of the Parole Board (Scotland) Rules 1993 and the Parole Board (Scotland ) Rules 1995.