

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2022 No. 385**

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

**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<sup>(1)</sup>—

- (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<sup>(2)</sup>, the Scottish Ministers must send—

---

<sup>(1)</sup> Section 17(1) and (1A) were substituted by section 36(4) of the 2003 Act.

<sup>(2)</sup> 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).

- (a) a copy of the latest risk management plan approved by the Risk Management Authority<sup>(3)</sup> 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.
- (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.

---

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