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STATUTORY INSTRUMENTS

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**1995 No. 1273 (S.99)**

**PRISONS**

**The Parole Board (Scotland) Rules 1995**

<i>Made</i>	- - - -	<i>9th May 1995</i>
<i>Laid before Parliament</i>		<i>11th May 1995</i>
<i>Coming</i>	- - - -	<i>1st June 1995</i>

The Secretary of State, in exercise of the powers conferred upon him by section 18(3A) of the Prisons (Scotland) Act 1989(1), and of all other powers enabling him in that behalf, hereby makes the following Rules:

**Citation and commencement**

1. These Rules may be cited as the Parole Board (Scotland) Rules 1995 and shall come into force on 1st June 1995.

**Interpretation**

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

“the Act” means the Prisons (Scotland) Act 1989;

“the Board” means the Parole Board for Scotland and includes, in relation to any case which is authorised by rule 13(2) and 14(3) to be dealt with, in whole or in part, by a specified number of members of the Board, those members;

“case” shall be construed in accordance with paragraph (2) of this rule;

“the chairman of the Board” means the chairman of the Board appointed by virtue of section 18 of the Act;

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

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

(2) Any reference in these Rules to a case or to the case of a person which is to be, or is being, dealt with by the Board means any case relating to a person in which the Board is to consider, or is considering any of the following matters, namely:—

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(1) 1989 c. 45. Section 18(3A) was inserted by section 134(3) of the Criminal Justice and Public Order Act 1994 (c. 33).

- (a) whether to recommend the release on licence of that person under or by virtue of sections 22 or 26 of the Act<sup>(2)</sup>;
- (b) what advice to give to the Secretary of State when consulted by him under or by virtue of subsection (7) of section 22 of the Act about a proposal to include on release, insert, vary or cancel a condition in the licence granted to that person (but this shall not include any case where the Secretary of State is treated, by virtue of that subsection, as having consulted the Board about such a proposal);
- (c) whether to recommend the revocation of that person's licence and his recall to prison under section 28(1) of the Act; and
- (d) whether to make a recommendation as to that person's immediate release on licence under section 28(5) of the Act.

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

### **Application**

3.—(1) Subject to paragraph (2) and except where otherwise expressly provided, these Rules shall apply to every case which is referred to the Board on or after 1st June 1995.

(2) In the application of these 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 recall to prison under section 28(1) of the Act—

- (a) rules 4 and 7 shall not apply;
- (b) in rule 5, the Secretary of State shall not be required—
  - (i) to include in the dossier which he sends to the Board all the information and documents specified in the Schedule but only such as may be available to him at the time when he sends the dossier to the Board; or
  - (ii) to send the dossier to the person concerned; and
- (c) for the purposes of Rule 8(e), the Board may take into account in dealing with the case of that person any information or documents contained in that dossier even although the person concerned has not received a copy of, or been given any opportunity to make written representations upon, the dossier.

### **Reference**

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

### **Secretary of State's dossier**

5. Subject to rule 6, not later than 2 weeks after the date of the reference of the case to the Board, the Secretary of State shall send to the Board and to the person concerned a dossier containing any information in writing or documents which he considers to be relevant to the case, including the information and documents specified in the Schedule.

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(2) Sections 22 to 32 of the Act, notwithstanding their repeal by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), are "existing provisions" for the purposes of Schedule 6 of that Act.

### **Non disclosure of information**

6.—(1) This rule applies where the Secretary of State considers that any written information or document contained in a dossier sent to the Board under rule 5 or otherwise given to the Board 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:—

- (a) that it would be likely adversely to affect the health, welfare or safety of that person or any other person;
- (b) that it would be likely to result in the commission of an offence;
- (c) 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;
- (d) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- (e) 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 in any case—

- (a) the Secretary of State 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 under rule 8(e) even although it has not been disclosed to the person concerned; and
- (c) the Secretary of State shall send to the person concerned a written notice—
  - (i) informing him that certain information which has been sent to the Board has not been sent to him because the Secretary of State 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 that information is not disclosed, the substance or gist of the damaging information; and
  - (iii) informing him that the written representations which he may make under rule 7 may include representations about the non disclosure of the damaging information,and the Secretary of State shall send a copy of that written notice to the chairman of the Board.

### **Representations**

7. Not later than 4 weeks after the date when the Secretary of State sent to the person concerned the dossier under rule 5, that person may send to the Board and, where he does so, shall send to the Secretary of State—

- (a) any representations in writing with respect to his case; and
- (b) any other information in writing or documents which he considers to be relevant to his case and wishes the Board to take into account.

### **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 current sentence or sentences;
- (c) the likelihood of that person committing any offence or causing harm to any other person if he were to be released on licence, remain on licence or be re-released on licence as the case may be;
- (d) what that person intends to do if he were to be released on licence, remain on licence or be re-released on licence, as the case may be, and the likelihood of his fulfilling those intentions; and
- (e) any written information or documents or written representations which the Secretary of State or the person concerned has sent to the Board under rule 5 or 7 or which the Board has otherwise obtained.

### **Confidentiality**

#### **9. Any information—**

- (a) in connection with the proceedings before the Board in dealing with a case;
- (b) about any application, document or written or oral information given to the Board; 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 otherwise directs; 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 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, 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, the Board 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 errors arising in such a document from an accidental slip or omission, may be corrected by the chairman of the Board by certificate under his hand.

### **Composition of Board**

**13.**—(1) Subject to paragraph (2) and Rule 14(3), the powers of the Board may be exercised by any 3 members of the Board.

(2) 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 purpose of dealing with that case, in whole or in part.

### **Procedure**

**14.**—(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 Secretary of State or the person concerned has 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).

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

- (a) where he 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.

### **Decision**

**15.** 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.

St Andrew's House,  
Edinburgh  
9th May 1995

*Fraser of Carmyllie*  
Minister of State, Scottish Office

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Rule 5

### INFORMATION AND DOCUMENTS TO BE SENT BY SECRETARY OF STATE TO THE BOARD

1. A note of the full name and the date of birth of the prisoner.
2. 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.
3. 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.
4. A copy of any report on the prisoner made while he was subject to a transfer direction under section 71 of the Mental Health (Scotland) Act 1984(3).
5. 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 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"), in dealing with cases relating to a person ("the person concerned") under the Prisons (Scotland) Act 1989 ("the Act") which are specified in Rule 2(2).

The Rules makes general provisions which apply to every case except where otherwise expressly provided (for the exceptional cases see, in particular, rule 3(2)). They make provision for—

- (a) a dossier of information to be sent by the Secretary of State to the Board and 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 be entitled 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);
- (f) certain procedural matters, such as time, the sending of documents and irregularities (rules 10-12).
- (g) the composition of the Board (rule 13);
- (h) the procedure to be followed by the Board (rule 14); and
- (i) the manner in which decisions may be taken by the Board (rule 15).

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(3) 1984 c. 36; section 71 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), subject to savings.