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STATUTORY INSTRUMENTS

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**2019 No. 1038**

**The Parole Board Rules 2019**

**PART 3**

**Parole Board proceedings**

**Withholding information or reports**

**17.—**(1) The Secretary of State and any third party authorised by the Secretary of State (“authorised third party”) may apply to the Board for information or any report (“the material”) to be withheld from the prisoner, or from both the prisoner and their representative, where the Secretary of State or the authorised third party considers—

- (a) that its disclosure would adversely affect—
  - (i) national security;
  - (ii) the prevention of disorder or crime, or
  - (iii) the health or welfare of the prisoner or any other person, and
- (b) that withholding the material is a necessary and proportionate measure in the circumstances of the case.

(2) An application under paragraph (1) may not be made later than 8 weeks before the date allocated for an oral hearing under rule 22.

(3) Where the Secretary of State or the authorised third party makes an application for the material to be withheld under paragraph (1), the Secretary of State or authorised third party must serve on the Board—

- (a) the material, or a separate document containing the material, and
- (b) a written application for non-disclosure, explaining why it is proposed to be withheld.

(4) On receipt of an application under paragraph (3)(b), either a panel chair or duty member appointed for that purpose, must consider the application and may make directions as necessary to enable determination of the application.

(5) Where the panel chair or duty member is satisfied that all relevant information has been served on the Board, they must consider the application and direct that the material should be—

- (a) served on the prisoner and their representative (if applicable) in full;
- (b) withheld from the prisoner or from both the prisoner and their representative, or
- (c) disclosed to the prisoner, or to both the prisoner and the prisoner’s representative (if applicable) in the form of a summary or redacted version.

(6) If—

- (a) a direction is given under paragraph (5)(a) and the Secretary of State or authorised third party intends to appeal against it in accordance with paragraph (11), or
- (b) a direction is given under paragraph (5)(b) or (c),

the Secretary of State, or the Board (where an authorised third party made the application under paragraph (3)), must, as soon as practicable, notify the prisoner and the prisoner's representative (if applicable) that an application has been made under paragraph (3)(b) and the direction that has been made under paragraph (5).

(7) If the panel chair or duty member appointed under paragraph (4) gives a direction under paragraph (5)(b) or (c) that relates only to the prisoner, and that prisoner has a representative, the Secretary of State or authorised third party must, subject to paragraphs (10) and (11), serve the material as soon as practicable (unless the panel chair or duty member directs otherwise) on the prisoner's representative, if the representative is—

- (a) a barrister or solicitor;
- (b) a registered medical practitioner, or
- (c) a person whom the panel chair or duty member appointed under paragraph (4) directs is suitable by virtue of their experience or professional qualifications.

(8) The panel chair or duty member may direct the appointment of a special advocate appointed by the Attorney General to represent the prisoner's interests where the panel chair or duty member appointed under paragraph (4)—

- (a) makes a direction under (5)(a) and the Secretary of State or the authorised third party appeals the direction under paragraph (11), or
- (b) makes a direction under (5)(b) or (c) that relates to a prisoner and their representative, or the prisoner does not have a representative.

(9) If a direction to appoint a special advocate is made under paragraph (8), the Secretary of State or authorised third party must serve the material as soon as practicable (unless the panel chair or duty member directs otherwise) on the special advocate.

(10) The material must not be disclosed to the prisoner's representative under paragraph (7) unless the prisoner's representative first gives an undertaking to the Board that the prisoner's representative will not, without the consent of the panel chair or duty member, disclose it to the prisoner or to any other person.

(11) Within 7 days of notification by the Secretary of State or Board in accordance with paragraph (6), either party or the authorised third party may appeal against that direction to the Board chair and notify the other party of the application to appeal.

(12) If the Secretary of State or authorised third party appeals the direction in accordance with paragraph (11), the Secretary of State or authorised third party need not serve the material under paragraphs (5) or (7) until the appeal is determined.

(13) Where a direction is made under paragraph (5)(b) or (c) to withhold material from a prisoner who does not have a representative, the decision will automatically be considered in an appeal to the Board chair.

(14) Within 7 days of being notified that a party has appealed under paragraph (11), the other party may make representations in respect of the appeal to the Board chair.

(15) If—

- (a) a panel chair or duty member appointed under paragraph (4) to determine an application under paragraph (1), or
- (b) the Board chair determining an appeal under paragraph (11) or (13),

decides that any material which is subject to the application by the Secretary of State or authorised third party under paragraph (1) should be disclosed to the prisoner (in full or in the form of a summary or redacted version), the Secretary of State or authorised third party may withdraw the material within 7 days of that decision.

(16) If the Secretary of State or authorised third party withdraws any material in accordance with paragraph (15), no one who has seen that material may be a member of a panel which determines the case.