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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. 385**

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

**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(1) 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 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.

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(1) 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).

(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>(2)</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.

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(2) 2003 asp 7.

(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.

(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>(3)</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.

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(3) 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.