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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2001 No.**

**The Life Sentence Commissioners' Rules 2001**

**Part I**

**Introductory**

**Title and commencement**

1. These Rules may be cited as the Life Sentence Commissioners' Rules 2001 and shall come into force on 2001.

**Application and interpretation**

2.—(1) Subject to rule 24, these Rules apply where a prisoner's case is referred to the Commissioners by the Secretary of State under Article 6(5) or Article 9(4) of the Order.

(2) In these Rules, unless a contrary intention appears—

“case papers” means those documents, materials and papers submitted by the parties under rule 14, 17 or 24(b).

“Chairman” means the Chairman of the Commissioners appointed under paragraph 1 of Schedule 1 of the Order.

“Chairman of the Panel” means Chairman of the Panel appointed under rule 3.

“Commissioners” means the Life Sentence Review Commissioners, appointed under Article 3 of the Order.

“the Order” means the Life Sentences (Northern Ireland) Order 2001.

“Panel” means a panel of Commissioners constituted in accordance with rule 3.

“parties” means the prisoner and the Secretary of State.

“party” means either the prisoner or the Secretary of State.

“prisoner” means a life prisoner as defined under Article 2 of the Order.

**Part II**

**General**

**Appointment and functions of Panels of Commissioners**

3.—(1) The Chairman shall appoint three Commissioners to form a Panel for the purpose of conducting proceedings in relation to a prisoner's case.

(2) The members of the Panel appointed under paragraph (1) shall include a person who holds a legal qualification under Article 3(2) of the Order.

(3) The members of the Panel shall, as far as is practicable, include a registered medical practitioner who is a psychiatrist or a chartered psychologist.

(4) If a member of the Panel to which a case has been allocated is unavailable, the Chairman may nominate another Commissioner to take his place if he considers it necessary to ensure the fair and expeditious conduct of the prisoner's case.

#### **Notice of referral and listing**

4. Where a case is referred to the Commissioners by the Secretary of State the Commissioners shall, within 7 days, list the case and serve written notice of referral on the parties indicating a provisional hearing date and timetable for the case.

#### **Representation**

5.—(1) Subject to paragraphs (2), (3) and (4) the prisoner may appoint a person to act as his representative.

(2) The following persons may act as a representative of the prisoner only with the consent of the Commissioners:

- (a) any person serving a sentence of imprisonment;
- (b) any person who has been released from prison on licence for life; and
- (c) any person with a previous conviction for an imprisonable offence which remains unspent under the Rehabilitation of Offenders (Northern Ireland) Order 1978(1).

(3) Subject to rule 11, the Commissioners, in deciding whether to grant their consent in accordance with paragraph (2), may require the prisoner and his proposed representative to provide to them such evidence, whether oral or written, including prison licence documentation and criminal records, as they consider necessary to enable them to make a direction.

(4) Any person detained under the Mental Health (Northern Ireland) Order 1986(2) may not act as a representative of the prisoner.

(5) Within 3 weeks of the case being listed, a party shall notify the Commissioners and the other party of the name, address and occupation of any person appointed in accordance with paragraph (1).

(6) Where the prisoner has not appointed a representative, the Commissioners may, with his consent, appoint an eligible person to act on his behalf.

(7) Where a party appoints a new representative or the name, address or occupation of his representative changes, he shall serve written notice giving details of the changes on the Commissioners and on the other party within 7 days of his appointing the new representative or becoming aware of the changes.

(8) A party may apply, in accordance with the procedure set out in rule 19(1) and (2), to be accompanied at the hearing by such other person or persons as he wishes, in addition to any representative he may have appointed; but before granting any such application the Commissioners shall obtain the agreement of:—

- (a) in the case where the hearing is to be held at a prison or other place of detention, the governor; and
- (b) in any other case, the person in whom is vested the authority to agree.

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(1) S.I.1978/1908 (N.I. 27)

(2) S.I. 1986/595 (N.I. 4)

### **General powers of the Commissioners**

6.—(1) Subject to the provisions of these Rules, the Commissioners may regulate their own procedure in dealing with each case as they consider appropriate.

(2) The Commissioners shall make available to the prisoner, to the Secretary of State, and to their representatives information regarding any procedures they adopt pursuant to paragraph (1).

(3) The Commissioners may deal with cases in the order they consider appropriate save that it shall so far as is practicable to do so, give priority to the consideration of cases where the person concerned is a recalled prisoner.

## **Part III**

### **Hearings**

#### **Oral hearing**

7.—(1) Except in so far as both parties and the Chairman of the Panel agree otherwise, there shall be an oral hearing of the prisoner's case.

(2) The prisoner shall, within 5 weeks of the case being listed, notify the Commissioners and the Secretary of State whether he wishes to attend the hearing.

#### **Notice of hearing**

8.—(1) When finalising the date for hearing the Commissioners shall consult the parties.

(2) The Commissioners shall give the parties at least 3 weeks notice of the date, time and place scheduled for hearing or such shorter notice to which the parties may consent.

#### **Location and privacy of hearings**

9.—(1) Hearings shall be held at the prison or other place of detention where the prisoner is detained.

(2) Hearings shall be held in private except in so far as the Chairman of the Panel otherwise directs.

(3) Information about the proceedings and the names of any persons concerned in the proceedings shall not be made public.

(4) The Chairman of the Panel may admit to the hearing such persons on such terms and conditions as he considers appropriate.

#### **Hearing procedure**

10.—(1) At the beginning of the hearing the Chairman of the Panel shall explain the order of proceedings which the Panel proposes to adopt.

(2) Subject to this rule, the Panel shall conduct the hearing in such manner as they consider most suitable to the clarification of the issues before them and generally to the just handling of the case and they shall, so far as appears to them appropriate, seek to avoid formality in the proceedings.

(3) Subject to paragraphs (5), (7) and (8) the parties shall be entitled to appear and be heard at the hearing and take such part in the proceedings as the Panel consider appropriate and the parties may:—

- (a) make submissions;

- (b) hear each other's evidence and submissions;
- (c) put questions to each other;
- (d) call any witnesses who the Commissioners have authorised to give evidence in accordance with rule 19; and
- (e) put questions to any witness appearing at the hearing.

(4) Subject to rule 18 the parties may not, without leave of the Panel, make submissions or rely on or refer to documents information or evidence which do not appear in substance in the case papers.

(5) The Panel may require any person present at the hearing who is, in their opinion, behaving in a contemptuous or disruptive manner to leave and may permit him to return, if at all, only on such conditions as they may direct.

(6) The Panel may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law but no person shall be compelled to give evidence or produce any document which he could not be compelled to give or produce on the trial of an action in the High Court.

(7) The Panel shall require the prisoner, any witness appearing for him and any other person they think appropriate, to leave the hearing where argument is being heard or evidence is being examined which includes or relates to information or reports withheld from the prisoner or others under rule 14(2).

(8) The Panel shall require the prisoner, his representative, any witness appearing for him and any other person they think appropriate, to leave the hearing where argument is being heard or evidence is being examined which includes or relates to confidential information which has not been made available to the prisoner or any other person under rule 15.

(9) After all the evidence has been heard, the prisoner shall be given a further opportunity to address the Panel.

### **Directions**

**11.**—(1) Subject to paragraph (4)(2)(b), the Chairman of the Panel may give, vary or revoke directions for the conduct of the case allocated to his Panel, including directions in respect of matters such as:—

- (a) the timetable for the case;
- (b) the varying of the time within which or by which an act, required or authorised by these Rules, be done;
- (c) the service of documents;
- (d) the submission and production of evidence;
- (e) the curing or waiving of irregularities;
- (f) the listing, location and adjournment of hearings;
- (g) the calling of witnesses;
- (h) the appointment of a special advocate and his conduct of a case under rule 16;
- (i) the granting of consent in accordance with rule 5(2);

and following his appointment under rule 3, the Chairman of the Panel shall consider whether such directions need to be given at any time.

(2) Directions under paragraph (1) may be given, varied or revoked either—

- (a) of the Chairman of the Panel's own motion; or
- (b) on the written application of a party to the Commissioners which has been served on the other party and which specifies the direction which is sought.

(3) Within 14 days of being notified of a direction under paragraph (1) either party may appeal to the Chairman of the Panel by serving a written notice of appeal stating the grounds of the appeal on both the Chairman of the Panel and the other party; the other party may in reply make representations on the appeal which shall be served on the Chairman of the Panel and the party moving the appeal.

(4)(1) The Chairman of the Panel shall consider the written representations of the parties.

(4)(2) After considering the representations made under paragraph (3) the Chairman of the Panel may:—

(a) make a decision; or

(b) where he thinks it necessary to hear oral submissions by the parties, he may decide to hold a preliminary hearing in accordance with paragraph 5 and subject to paragraph 6(b); and he shall give the parties at least 14 days' notice of the time and place fixed for the hearing.

(5) Except in so far as the Chairman of the Panel otherwise directs, at a preliminary hearing:—

(a) the Chairman of the Panel shall sit alone; and

(b) the preliminary hearing shall be conducted in accordance with rule 9 as it applies to the hearing of the case, save the prisoner shall not attend except where he is unrepresented.

(6) The decision of the Chairman of the Panel made under paragraph 4(2)(a) or (b) shall be final and shall be recorded in writing with reasons, dated and signed by him, and communicated in writing to the parties not more than 7 days after the date of the making of the decision under paragraph 4(2) (a) or, where appropriate, the end of the preliminary hearing held under paragraph 4(2)(b).

### **Adjournment**

**12.—**(1) The Panel may at any time adjourn a hearing by way of direction for any purpose they consider appropriate.

(2) On adjourning any hearing, the Panel shall give such directions as they consider appropriate for ensuring the prompt consideration of the case at a resumed hearing.

(3) In any case where a hearing is adjourned without a resumed hearing date having been fixed by way of a direction given under paragraph (2), the Panel shall give the parties not less than 14 days notice, or such shorter notice to which all parties may consent, of the date, time and place of the resumed hearing.

### **The decision**

**13.—**(1) Any decision of the majority of the Panel shall be the decision of the Panel.

(2) The decision of the Panel shall be recorded in writing with reasons, dated and signed by the Chairman of the Panel, and communicated in writing to the parties not more than 7 days after the end of the hearing.

## **Part IV**

### **Evidence and Information**

#### **Information and reports by the Secretary of State**

**14.—**(1) Within 8 weeks of the case being listed, and subject to paragraph (2) and rule 15, the Secretary of State shall serve on the Commissioners and the prisoner or his representative:—

(a) the information specified in Part A of Schedule 1 to these Rules; and

(b) the reports specified in Part B of that Schedule.

(2) Any part of the information or reports referred to in paragraph (1) which, in the opinion of the Secretary of State, should be withheld from the prisoner on the ground that its disclosure would adversely affect the health or welfare of the prisoner or others, shall be recorded in a separate document and served only on the Commissioners together with the reasons for believing that its disclosure would have that effect.

(3) Where a document is withheld from the prisoner in accordance with paragraph (2), it shall nevertheless be served as soon as practicable on the prisoner's representative if he is:—

- (a) a barrister or solicitor;
- (b) a registered medical practitioner; or
- (c) a person whom the Chairman of the Panel directs is suitable by virtue of his experience or professional qualification;

provided that no information disclosed in accordance with this paragraph shall be disclosed either directly or indirectly to the prisoner or to any other person without the authority of the Chairman of the Panel.

#### **Non-disclosure of confidential information**

**15.**—(1) This rule applies where the Secretary of State certifies as confidential any information, document or evidence which, in his opinion, would if disclosed to the prisoner or any other person be likely to:

- (a) adversely affect the safety of any individual;
- (b) result in the commission of an offence;
- (c) facilitate an escape from lawful custody or the doing of any act prejudicial to the safe keeping of persons in custody;
- (d) impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- (e) be contrary to the interests of national security; or
- (f) otherwise cause substantial harm to the public interest;

and any such information, document or evidence is referred to in these Rules as confidential information.

(2) The Commissioners shall not in any circumstances disclose to or serve on the prisoner, his representative or any witness appearing for him any confidential information and shall not allow the prisoner, his representative or any witness appearing for him to hear argument or the examination of evidence which relates to any confidential information.

(3) Where the Secretary of State has certified information as confidential, he shall, within 7 days of doing so, serve on the prisoner and on the Commissioners, whether by way of inclusion with the case papers or otherwise, written notice of this stating, so far as he considers it possible to do so without causing harm of the kind referred to in paragraph (1), the gist of the information he has thus withheld and his reasons.

#### **Special Advocates**

**16.**—(1) On receiving a certificate of confidential information under rule 15, the Chairman of the Panel shall inform the Attorney General of the proceedings before the Panel, with a view to the Attorney General, if he thinks fit to do so, appointing a special advocate to represent the interests of the prisoner.

(2) The function of the special advocate is to represent the interests of the prisoner, as mentioned by paragraph (1), by:—

- (a) making submissions to the Panel in any hearings from which the prisoner and his representative are excluded;
- (b) cross-examining witnesses at any such hearings; and
- (c) making written submissions to the Panel.

(3) Except in accordance with paragraph (5) a special advocate may not communicate directly or indirectly with the prisoner he has been appointed to represent on any matter connected with the case before the Panel.

(4) A special advocate may seek directions from the Panel authorising him to seek information in connection with the case from the prisoner whose interests he has been appointed to represent.

(5) In paragraph (5) a reference to a prisoner whose interests he has been appointed to represent includes the representative of the prisoner.

### **Evidence of the prisoner**

17.—(1) Where the prisoner wishes to make representations about his case, he shall serve them on the Commissioners and the Secretary of State within 15 weeks of the case being listed.

(2) Any other documentary evidence that the prisoner wishes to adduce shall be served on the Commissioners and the Secretary of State at least 14 days before the date of the hearing.

### **Further evidence and information**

18.—(1) Following receipt of the papers from the parties, the Commissioners may request either party to produce further evidence or information on any topic relevant to the conduct or determination of the case and may stay the progress of the case until a response to their request has been received.

(2) Subject to rules 14(2) and 15, any further evidence or information produced under paragraph (1) shall be served, by the party responding, on the Commissioners and on the other party.

(3) A party may not supplement or add to case papers, response papers or further evidence and information produced and served under this rule without the leave of the Commissioners, or, after the allocation of a case to a Panel, the Chairman of the Panel.

### **Witnesses**

19.—(1) Where a party wishes to call witnesses at the hearing, he shall make a written application to the Commissioners, a copy of which he shall serve on the other party, not less than 12 weeks before the date of the hearing, giving the name, address and occupation of the witness he wishes to call and the substance of the evidence he proposes to adduce.

(2) The Chairman of the Panel may grant or refuse an application under paragraph (1) and shall communicate within 7 days his decision to both parties, giving reasons in writing, in the case of a refusal, for his decision.

## Part V

### Miscellaneous

#### **Time**

**20.** Where the time prescribed by or under these rules for doing any act expires on a Saturday, Sunday or public holiday in Northern Ireland, the act shall be done in time if done on the next working day.

#### **Transmission of documents etc**

**21.**—(1) Subject to paragraph (2), any document required or authorised by these Rules to be served on or otherwise transmitted to any person may be sent by pre-paid post or delivered:—

- (a) in the case of a document directed to the Commissioners, to the office of the Commissioners;
- (b) in the case of a document directed to the Secretary of State, to the Life Sentence Unit, Northern Ireland Prison Service Headquarters;
- (c) in any other case, to the last known address of the person to whom the document is directed.

(2) Service of any document required to be served or otherwise transmitted under these Rules may be effected by FAX where:—

- (a) the technical facilities are available to the parties and the parties consent to and agree upon mode of service;
- (b) the parties agree the specified FAX numbers to which the document is transmitted; and
- (c) not later than one day after service by FAX, the party serving the document dispatches a copy of it to the other party or parties, as required by these Rules, by any of the means prescribed for service under paragraph (1), and if he fails to do so, the document shall be deemed never to have been served by FAX.

(3) Where the FAX is transmitted on a working day before 4.00 pm it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the working day next following.

(4) In this Rule “FAX” means the making of a facsimile copy of a document by the transmission of electronic signals.

#### **Irregularities**

**22.** Any irregularity resulting from a failure to comply with these Rules, or with any rule of practice for the time being in force, which occurs before a Panel of Commissioners has determined a case shall not of itself render the proceedings void, unless the Commissioners or a Panel of Commissioners shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Commissioners or the Panel of Commissioners shall think fit.

#### **Clerical mistakes and slips**

**23.** Clerical mistakes in any document recording decisions under these Rules, or errors arising in such document from an accidental slip or omission, may be corrected by the Chairman of the Panel by certificate under his hand or, with the consent of the parties, by written certification of the Commissioners.



## Part VI

### Recalled Prisoners

#### **Recalled prisoners**

**24.** Where the Secretary of State refers a prisoner's case to the Commissioners under Article 9(4) of the Order, these Rules shall apply subject to the following modifications:—

- (a) rules 4, 5 (5) and (7), 7(2), 8(2), 11(4)(2)(b) and (6), 12(3), 13(2), 14(1), 17(1) and (2), 19(1) and (2) shall apply as if for references to the periods of time specified therein there were substituted a reference to such period of time as the Commissioners or the Chairman of the Panel shall in each case determine, taking account of both the desirability of reaching an early decision in the prisoner's case and the need to ensure fairness to the prisoner.
- (b) Rule 14(1) shall apply as if the reference therein to the information and reports specified in Schedule 1 there were substituted a reference to the information and reports specified in Schedule 2.