
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 315

The Parole Board (Scotland) Rules 2001

PART IV

PROVISIONS APPLYING TO TRIBUNAL CASES

Application

17.—(1) Subject to paragraph (2), this Part of these Rules applies to the case of any prisoner which is referred to the Board by the Scottish Ministers under section 28(4) of the 1989 Act or sections 2(5)(a), (5B), (5C) or (6), 3A(2), or 17(3) of the 1993 Act or under paragraphs 34, 38 or 42 of the Schedule to the 2001 Act.

(2) The time appointed by or under these Rules for the doing of any act may, in the case of a prisoner which is referred by the Scottish Ministers under section 28(4) of the 1989 Act, section 17(3) of the 1993 Act or under paragraph 34, 38 or 42 of the Schedule to the 2001 Act, be varied as the chairman of the tribunal shall in each case determine, taking account of both the desirability of the tribunal reaching an early decision in that case and the need to ensure fairness to the parties.

Composition of tribunal

18.—(1) Subject to paragraphs (2), (3) and (4) below, any case may be dealt with, in whole, by 3 members of the Board who are appointed by the chairman of the Board to form a tribunal for the purpose of dealing with that case.

(2) No member of the Board who took part in making a recommendation under section 28(1) of the 1989 Act in relation to a person shall be appointed by the chairman to deal with that person's case under section 28(4) of that Act.

(3) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a person shall be appointed by the chairman to deal with that person's case under section 17(3) of that Act.

(4) The members of a tribunal appointed under paragraph (1) shall include either—

- (a) a person who holds or who has held judicial office; or
- (b) a solicitor or advocate of not less than 10 years standing;

and the chairman of the Board shall appoint that person to be chairman of the tribunal.

(5) In the event of the death or incapacity or unavailability (for whatever reason) of any member of a tribunal (“the absent member”)—

- (a) before the hearing has commenced, the chairman of the Board shall, subject to paragraphs (2), (3) and (4), appoint another member of the Board in the place of the absent member; or
- (b) after the hearing has commenced, the case may continue to be dealt with by the 2 remaining members of the tribunal, if the absent member is a member other than the chairman of the tribunal and with the consent of the parties, but if this does not occur, the chairman of the

Board shall, subject to paragraphs (2), (3) and (4) appoint another member of the Board in place of the absent member and the hearing shall be recommenced.

General procedure

19.—(1) Subject to the provisions of these Rules, a tribunal may regulate its own procedure for dealing with a case.

(2) Subject to paragraph (3), the chairman of the tribunal may give, vary or revoke directions for the conduct of the case, including directions in respect of—

- (a) the timetable for the proceedings;
- (b) the varying of the time within which or by which an act is required, by these Rules, to be done;
- (c) the service of documents; and
- (d) the submission of evidence,

and, following his appointment under rule 18(2), the chairman of the tribunal shall consider whether such directions need to be given at any time.

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

- (a) on the chairman of the tribunal's own motion; or
- (b) on the written application of a party to the chairman of the tribunal which has been sent to the other party and which specifies the direction which is sought,

but, in either case, both parties shall be given an opportunity to make written representations or, where the chairman of the tribunal thinks it is necessary and subject to paragraph (6), to make oral submissions at a preliminary hearing fixed in accordance with paragraph (4).

(4) Where the chairman of the tribunal decides to hold a preliminary hearing, he shall give the parties at least 14 days' notice of the date, time and place which has been fixed in respect thereof.

(5) A preliminary hearing shall be held in private.

(6) At a preliminary hearing, except insofar as the chairman of the tribunal otherwise directs,

- (a) the chairman of the tribunal shall sit alone; and
- (b) both parties and their representatives may attend.

(7) The chairman of the tribunal shall take a note of the giving, variation or revocation of a direction under this rule and shall send a copy to both parties as soon as practicable thereafter.

Hearing

20. There shall be an oral hearing of the prisoner's case unless both parties and the tribunal otherwise agree.

Notice of hearing

21.—(1) Subject to paragraph (2), the tribunal shall give the parties not less than 3 weeks' notice of the date, time and place of the hearing or such shorter notice to which the parties may consent.

(2) Unless both parties otherwise agree, the hearing shall not take place earlier than 3 weeks after the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7.

(3) The tribunal may vary any notice given under paragraph (1) and shall give the parties not less than 7 days' (or such shorter time as the parties may agree) notice of any such variation;

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

- (4) The tribunal may, from time to time, adjourn the hearing and—
 - (a) in the case where the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required; and
 - (b) in any other case, the tribunal shall give the parties not less than 7 days' (or such shorter time as the parties may agree) notice of the date, time and place of the adjourned hearing.

Representative

22.—(1) Subject to paragraph (3), each party may be represented at the hearing by any person whom he or she has authorised for that purpose.

(2) Not later than the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7, a party shall give the tribunal and the other party written notice of the name, address and occupation of any person authorised in accordance with paragraph (1).

(3) The tribunal may refuse to permit a person to represent a party at the hearing, if it is satisfied that there are good and sufficient reasons for doing so.

(4) Where a prisoner does not authorise a person to act as his or her representative, the tribunal may, with his or her agreement, appoint someone to act on his or her behalf.

Authorisation of persons to attend a hearing to give evidence or to produce documents

23.—(1) Where a party wishes to call any person to attend a hearing under rule 20 and to give evidence thereat, or to produce documents which relate to any matter in question at such a hearing, he or she shall not later than the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7, make a written application to the tribunal to authorise that person to attend the hearing to give evidence or to produce documents.

(2) Any application under paragraph (1) shall give the name, address and occupation of each person in respect of whom the application is made and a statement of what the general nature of his or her evidence is likely to be.

(3) Any party who makes an application under paragraph (1) shall, at the same time as the application is made, send a copy of that application to the other party.

(4) The chairman of the tribunal may grant or refuse an application under paragraph (1) and shall give each party written notice of his decision and, where the application is refused, of the reasons for that decision.

Citation of persons to attend a hearing to give evidence or to produce documents

24.—(1) For the purposes of requiring any person to attend a hearing under rule 20 and to give evidence thereat, or to produce documents which relate to any matter in question at such a hearing, the provisions of subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973(1) shall 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 chairman of the tribunal;

(1) 1973 c. 65; section 210(5) was amended by virtue of the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289(f) and 289(g) (as inserted by the Criminal Justice Act 1982 (c. 48), section 54).

- (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) Subject to the following paragraphs of this rule, the chairman of the tribunal may at any time exercise the powers conferred on him by paragraph (1) to require any person to attend to give evidence or to produce any books or other documents—

- (a) on the application of a party; or
- (b) where he is authorised by the tribunal to do so on its own motion.

(3) Where a party wishes to make an application for the purposes of paragraph (2) he or she shall, not later than the expiry of the period within which the prisoner may send written representations to the tribunal under rule 7, make a written application to the tribunal.

(4) Any application under paragraph (3) shall give the name and address of each person in respect of whom the application is made.

(5) Any party who makes an application under paragraph (3) shall, at the same time as the application is made, send a copy of that application to the other parties.

(6) The chairman of the tribunal may grant or refuse an application under paragraph (3) and shall give each party written notice of his decision and, where the application is refused, of the reasons for that decision.

(7) Where any written notice requiring any person to attend to give evidence or to produce any books or other documents is made by virtue of this rule, the Board shall—

- (a) forthwith send the notice signed by the chairman of the tribunal to the person who is named in the notice as the person subject to the requirement specified; and
- (b) send a copy of the notice to each party.

Other persons accompanying a party

25.—(1) Where a party wishes to be accompanied at the hearing by another person or persons, in addition to any representative whom he or she may have authorised or who may have been appointed under rule 22, he or she shall, not later than the expiry of the period within which the prisoner may submit written representations to the tribunal under rule 7, make a written application to the tribunal to authorise that person or persons to accompany him or her at the hearing.

(2) Any application under paragraph (1) shall give the name, address and occupation of the person or persons whom the party wishes to accompany him or her and a statement of the reasons why he or she wishes to be so accompanied.

(3) Any party who makes an application under paragraph (1) shall, at the same time as the application is made, send a copy of that application to the other party.

(4) The chairman of the tribunal may grant or refuse an application under paragraph (1) and shall give each party written notice of his decision and, where the application is refused, of the reasons for that decision.

Attendance at hearing

26.—(1) The hearing shall be held in private.

(2) No person shall be entitled to attend the hearing unless that person is—

- (a) a member of the tribunal;
- (b) the clerk to the tribunal;

- (c) a party;
- (d) a representative of a party;
- (e) any person who is authorised by the chairman of the tribunal to attend the hearing under or by virtue of rule 23 or 25 or paragraph (3) of this rule;
- (f) any person who is required to attend by virtue of rule 24(2)(b);
- (g) any person who is authorised by the tribunal to attend the hearing under paragraph (4) of this rule; or
- (h) a member of the Council on Tribunals or of the Scottish Committee of that Council.

(3) Where the Scottish Ministers or any person responsible for the security of any building in which a hearing takes place consider it desirable that any person or persons should attend the hearing so as to preserve the security of that building or to ensure the safety of any person attending that hearing, he or she may apply at any time to the chairman of the tribunal for that purpose and the chairman of the tribunal may grant or refuse such an application and shall inform each party of his decision and, where the application is refused, of the reasons for that decision.

(4) Notwithstanding rule 23 or 25 or paragraph (3), the tribunal may at any time authorise any person to attend a hearing for such purpose and on such terms and conditions as it considers to be appropriate.

Procedure at hearing

27.—(1) At the beginning of the hearing, the chairman of the tribunal shall explain the order of proceeding which the tribunal proposes to adopt at the hearing.

(2) Subject to this rule, the tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall, so far as appears to it appropriate, seek to avoid formality in the proceedings.

(3) The parties shall be heard in such order as the tribunal may determine and shall be entitled at the hearing—

- (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 (or in the case of the Scottish Ministers, their official or officials attending the hearing) and to any person called by the other party;
- (c) to call any person whom the tribunal has authorised to give evidence or to produce any document in accordance with rule 23; and
- (d) to make submissions to the tribunal,

and any member of the tribunal shall be entitled to put questions to any party or representative or any person giving evidence.

(4) Without prejudice to any other powers it may have, the tribunal may exclude from the hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

(5) The tribunal may consider any document or information notwithstanding that such document or information would be inadmissible in proceedings before a court of law but no person shall by virtue of these Rules be compelled to give any evidence or to produce any document which he or she could not be compelled to give or produce in proceedings before a court of law.

Decision

28.—(1) A decision of a tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority;

Provided that, where the tribunal is constituted by 2 members, the chairman of the tribunal shall have a second or casting vote.

- (2) The decision of the tribunal shall be recorded in a document which shall—
 - (a) contain a statement of the reasons for the decision;
 - (b) be signed and dated by the chairman of the tribunal; and
 - (c) be sent to the parties not later than 14 days after the end of the hearing.