

2022 No. 717

PRISONS, ENGLAND AND WALES

The Parole Board (Amendment) Rules 2022

Made - - - - 28th June 2022

Laid before Parliament 30th June 2022

Coming into force for all purposes except Rules

19(a)(i) and 19(c)(ii) 21st July 2022

for Rules 19(a)(i) and 19(c)(ii) 21st September 2022

The Secretary of State, in exercise of the powers conferred by section 239(5) of the Criminal Justice Act 2003(a), makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Parole Board (Amendment) Rules 2022.

(2) These Rules come into force on 21st July 2022 for all purposes except for rules 19(a)(i) and 19(c)(ii) which come into force on 1st September 2022.

(3) In these Rules, “the 2019 Rules” means the Parole Board Rules 2019(b).

Amendments to the 2019 Rules

2.—(1) The 2019 Rules are amended as follows.

(2) In rule 2 (interpretation)—

- (a) in the definition of “Board chair” for “chairman” substitute “chair”;
- (b) omit the definition of “direct application”;
- (c) in the definition of “extended sentence” for “or sexual offences under” substitute “, sexual or terrorist offences under sections 254, 266 and 279 of the Sentencing Code, or”;
- (d) in the definition of “panel”, after “(3)” insert “, (4A)”;
- (e) after the definition of “request for advice” insert—

““serious terrorism sentence” means a serious terrorism sentence under sections 268A and 282A of the Sentencing Code;”.

(3) In rule 3(1) (application), omit “and direct applications”.

(4) In rule 4 (delegation and appointment of functions), after paragraph (3)(b)(ii) insert—

“(c) in recall cases where the prisoner is serving a determinate sentence, a direction that the case should proceed directly to an oral hearing under rule 19(1)(c).”.

(5) In rule 5 (appointment of panels)—

(a) 2003 c. 44.
(b) S.I. 2019/1038.

- (a) in paragraph (3), omit “following receipt of further evidence.”;
 - (b) after paragraph (4) insert—
 - “(4A) For any application made to set aside a final decision under rule 28A, the Board chair must appoint one or more members of the Board to constitute a panel to consider the application.”;
 - (c) in paragraph (5), for “application”, in both places it occurs, substitute “reference”.
- (6) In rule 6 (case management and directions)—
- (a) in paragraph (3), after paragraph (d) insert—
 - “(e) holding a directions hearing or case management conference.”;
 - (b) in paragraph (8)(b), after “directions hearing” insert “or case management conference”.
- (7) In rule 7 (directions hearings)—
- (a) in the heading, after “Directions hearings” insert “and case management conferences”;
 - (b) in paragraphs (1), (2), (3), (4) and (6), after “directions hearing”, in each place it occurs, insert “or case management conference”;
 - (c) omit paragraph (5).
- (8) In rule 12 (date of service)—
- (a) in paragraph (2), for “Any” substitute “Unless the Board chair directs otherwise, any”;
 - (b) after paragraph (2), insert—
 - “(2A) Any direction by the Board chair under paragraph (2) must specify the date on which the direction takes effect and the date on which it expires.”.
- (9) In rule 14 (observers)—
- (a) in paragraph (4), after “to the parties” insert “, including any conditions to be imposed on the observer’s admittance”;
 - (b) for paragraph (5) substitute—
 - “(4A) Where an oral hearing, or part of it, is to be held in private under rule 15, in addition to any witness who has been called under these Rules, and any observer whose attendance has been approved under paragraph (4), the panel chair or duty member may—
 - (a) admit any other person to the oral hearing as an observer, and
 - (b) impose conditions on that person’s admittance.
 - (4B) Any person may request admittance to an oral hearing as an observer under paragraph (4A)(a) by making a written application to the Board, but such an application may not be made later than 3 weeks before the date allocated for the oral hearing under rule 22.
 - (4C) On receipt of an application under paragraph (4B) the Board must inform the parties that the application has been made, and must provide an opportunity for the parties to make representations to the Board on the application.
 - (5) Before admitting any person to attend an oral hearing as an observer at a prison or other premises where the panel chair or duty member has no authority to agree the admittance of that person, the panel chair or duty member must obtain the agreement of the prison governor, prison director or other person who appears to have the authority to agree to such admittance.”.
- (10) In rule 15 (location and privacy of oral hearings)—
- (a) for the heading substitute “Public and private hearings and location”;
 - (b) for paragraph (3) substitute—
 - “(3) An oral hearing (including a directions hearing or case management conference) must be held in private unless the Board chair considers, on their own initiative or on an application to the Board, that it is in the interests of justice for the oral hearing to be held in public.

(3A) Any application for an oral hearing to be held in public under paragraph (3) may not be made later than 12 weeks before the date allocated for the oral hearing.

(3B) If an oral hearing is held in public, the panel chair or duty member may give a direction that part of the oral hearing is to be held in private.”;

(c) omit paragraph (4);

(d) in paragraph (5), omit “or under paragraph (4)”.

(11) In rule 17 (withholding information or reports)—

(a) in paragraph (7)—

(i) for “paragraphs 10 and 11” substitute “paragraph 11”;

(ii) for the words from “if the representative is” to the end, substitute—
“provided that—

(a) the representative is—

(i) a barrister or solicitor;

(ii) a registered medical practitioner; or

(iii) a person whom the panel chair or duty member appointed under paragraph (4) directs is suitable by virtue of their experience or professional qualifications;
and

(b) the representative has first given an undertaking to the Board that they will not disclose the material to the prisoner or to any other person, other than other representatives also responsible for that prisoner’s case.”;

(b) in paragraph (8), after the words “The panel chair or duty member” where they first appear, insert “making the determination in regards to the non-disclosure application, or the panel chair or duty member at a later date.”;

(c) omit paragraph (10);

(d) after paragraph (14) insert—

“(14A) In determining an appeal under paragraph (11) or (13), the Board chair must consider the application and may make directions as necessary to enable determination of the application, including a direction under paragraph (8).

(14B) The Board chair may determine an appeal by—

(a) upholding the decision made by the panel chair or duty member under paragraph (5); or

(b) substituting their own decision, which may contain any direction that the panel chair or duty member could have made under paragraph (5).

(14C) When the Board chair has made a decision under paragraph (14B) the Secretary of State, or the Board (where an authorised third party made the application to appeal under paragraph (11)), must, as soon as practicable, notify the prisoner and the prisoner’s representative (if applicable) that a decision has been made and its outcome.

(14D) The panel chair or duty member may consent to the disclosure of any material withheld under this rule at a later date provided that the direction is subject to a separate right of appeal under paragraph (11).”;

(e) in paragraph (15)—

(i) at the end of sub-paragraph (a) omit “or”;

(ii) at the end of sub-paragraph (b) insert “or”;

(iii) after sub-paragraph (b) insert—

“(c) a panel chair or duty member consenting to disclosure under paragraph (14D).”;

(iv) after “disclosed to the prisoner” insert “or the prisoner’s representative”;

(v) omit “within 7 days of that decision”;

- (f) for paragraph (16) substitute—
- “(16) If the Secretary of State does not withdraw any material in accordance with paragraph (15), they must serve on the prisoner or the prisoner’s representative or both (as directed by the Board chair)—
- (a) the decision, subject to any redactions the Board considers necessary so as not to undermine the decision;
 - (b) any material directed to be disclosed, subject to receipt of an undertaking if so directed.”.
- (12) In rule 19 (consideration on the papers), for paragraph (8) substitute—
- “(8) The panel’s decision or advice must include the reasons for that decision or advice.”.
- (13) In rule 20 (procedure after a provisional decision on the papers)—
- (a) in paragraph (2), for “the provision of the written record” substitute “receipt of the decision or advice”;
 - (b) omit paragraph (4);
 - (c) in paragraph (7), for the words from “be provided to the parties” to the end substitute—
- “—
- (a) be provided to the parties by the Board within 14 days of the application being served by the prisoner under paragraph (2); and
 - (b) include the reasons for that decision.”.
- (14) In rule 21 (decision on the papers after a direction for an oral hearing)—
- (a) in paragraph (1)—
 - (i) omit “further evidence is received by the Board after”;
 - (ii) for “can” substitute “may”;
 - (iii) after “is no longer necessary” insert—

“—

 - (a) in the interests of justice;
 - (b) to effectively manage the case; or
 - (c) for such other reason as the panel chair or duty member considers appropriate, including where further evidence is received by the Board.”;
 - (b) for paragraph (2) substitute “The Board must notify the parties where it is considering making a direction in accordance with paragraph (1) and its reasons for doing so as soon as practicable.”;
 - (c) in paragraph (3)—
 - (i) omit “of the receipt of further evidence”; and
 - (ii) before paragraph (a) insert—

“(za) the reasons provided by the Board for the proposed direction;”;

 - (iii) in paragraph (a), for the second “the” substitute “any”;
 - (d) in paragraph (4), after “consider the” insert “case, including any”;
 - (e) omit paragraph (6);
 - (f) in paragraph (12), for the words from “be recorded in writing” to the end substitute “include the reasons for that decision and/or recommendation.”.
- (15) In rule 24 (oral hearing procedure)—
- (a) in paragraph (1), for the words from “the panel chair must” to the end substitute “the panel chair must explain the order of proceedings which the panel plans to adopt.”;
 - (b) for paragraph (4) substitute—

- “(4) The panel chair may exclude from any oral hearing (including a directions hearing or case management conference), or part of it—
- (a) any person whose conduct the panel chair considers is disrupting or is likely to disrupt the oral hearing;
 - (b) any person whose presence the panel chair considers is likely to prevent another person from giving evidence or making submissions freely;
 - (c) any person during any part of the hearing where evidence which has been directed to be withheld from the prisoner or the prisoner and their representative under rule 17 is to be considered; or
 - (d) a witness until that witness gives evidence.”;
- (c) in paragraph (5), for “required to leave” substitute “excluded”;
- (d) omit paragraph (8).
- (16) In rule 25 (decision by a panel at an oral hearing)—
- (a) in paragraph (6), for the words from “be recorded in writing” to the end substitute—
“—
 - (a) be provided to the parties within 14 days of the hearing; and
 - (b) include the reasons for that decision and/or recommendation.”;
 - (b) in paragraph (7), omit “recorded”.
- (17) In rule 26 (decision making by a panel at an oral hearing)—
- (a) in the heading, omit “at an oral hearing”;
 - (b) for paragraph (1) substitute—
“(1) Where a panel is constituted of more than one member, a decision of the majority of the members of the panel is the decision of the panel.”;
 - (c) in paragraph (2) omit “for an oral hearing”.
- (18) In rule 27 (summaries and disclosure)—
- (a) in paragraph (1)—
 - (i) after “decision”, in both places it occurs, insert “or recommendation”;
 - (ii) in paragraph (a) for “21(7), 25(1)” substitute “19(2), 21(7), 21(10), 25(1), 25(4)”;
 - (b) in paragraph (2), after “decision” insert “or recommendation”;
 - (c) for paragraph (5) substitute—
“(5) Subject to paragraph (1) and rule 17, the Board chair may prohibit or permit the disclosure, recording or publication of proceedings or information about proceedings under these Rules.
(5A) A decision of the Board chair under paragraph (5) may relate to a class of proceedings.”;
 - (d) in paragraph (6), after “paragraphs (1) to (5)” insert “unless the Board chair gives a direction to the contrary”.
- (19) In rule 28 (reconsideration of decisions)—
- (a) in paragraph (1)—
 - (i) for “21(7) or 25(1)” substitute “21(7), 25(1) or 31(6)(a) or (c), or (6A)”;
 - (ii) for the words from “the decision is” to the end, substitute—
“the decision—
 - (a) contains an error of law;
 - (b) is irrational; or
 - (c) is procedurally unfair.”;
 - (b) in paragraph (2), after paragraph (c) insert—

- “(d) a serious terrorism sentence.”;
 - (c) in paragraph (3)—
 - (i) for “written decision recorded” substitute “decision”;
 - (ii) for “21(5) or “25(6)” substitute “21(5), 25(6) or 31(7)”;
 - (d) in paragraph (10) for the words from “be recorded in writing” to the end substitute “include the reasons for that decision or advice.”.
- (20) After rule 28 insert—

“28A. Setting aside final decisions

(1) The Board may set aside a final decision made under rule 19(1)(a) or (b), 21(7) or 25(1)—

- (a) on application by a party; or
- (b) on initiation by the Board chair.

(2) An application or initiation under paragraph (1)(a) or (b) must be considered on the papers by a decision maker.

(3) A final decision may be set aside under paragraph (1) by a decision maker if—

- (a) it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (4) are satisfied.

(4) The conditions are—

- (a) the decision maker is satisfied that a direction given by the Board for, or a decision made by it not to direct, the release of a prisoner would not have been given or made but for an error of law or fact;
- (b) the decision maker is satisfied that a direction given by the Board for the release of a prisoner would not have been given if—
 - (i) information that was not available to the Board when the direction was given had been so available, or
 - (ii) a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.

(5) An application or initiation to set aside a decision under paragraph (1)(a) or (b) must be made—

- (a) within 21 days of the decision; or
- (b) if the application or initiation relies on a condition in paragraph (5)(b), before the prisoner is released.

(6) Where an application is made under paragraph (1)(a)—

- (a) the party who made the application must serve the application and any representations in support upon the Board and the other party;
- (b) the Secretary of State must serve all relevant information and reports upon the Board and the other party; and
- (c) the other party may make any representations in reply, and those representations must be provided to the Board and the party who made the application within 7 days of service of the application.

(7) Where an initiation is made under paragraph (1)(b)—

- (a) the Board must notify both parties of the initiation by the Board chair and serve any reasons in support of the initiation upon the parties;
- (b) the Secretary of State must serve all relevant information and reports upon the Board and the other party; and

- (c) the parties may make any representations in reply, and those representations must be provided to the Board and the other party within 7 days of service of the initiation.
- (8) Where the decision maker directs that a final decision should be set aside, they must also direct that the case should be—
 - (a) decided again on the papers by the previous panel or a new panel appointed under rule 5(1), or
 - (b) decided again at an oral hearing by the previous panel or a new panel appointed under rule 5(2).
- (10) The decision of the decision maker under paragraph (3) must include the reasons for that decision.
- (11) Any requirement on the Secretary of State to give effect to a Parole Board direction to release a prisoner under Chapter 2 of Part 2 of the 1997 Act or Chapter 6 of Part 12 of the 2003 Act, is suspended when an application is made under paragraph (1)(a) or (b), pending the decision under paragraph (3).
- (12) In this rule, “decision maker” means—
 - (a) a panel appointed under rule 5(4A) to consider the application; unless
 - (b) one or more grounds of the application related to paragraph (4)(b) of this rule apply and the panel appointed under rule 5(4A) delegates the role of decision maker to the chair of the panel who made the decision which is sought to be set aside.”
- (21) In rule 31 (application to terminate IPP licences)—
 - (a) in the heading, for “Applications” substitute “References”;
 - (b) for paragraph (1) substitute—
 - “(1) Where the Secretary of State makes a reference for an offender’s licence to be terminated under section 31A of the 1997 Act, the Secretary of State must serve any reports or evidence at the same time as making the reference to the Board.”;
 - (c) omit paragraph (2);
 - (d) omit paragraph (3);
 - (e) in paragraph (4), for the words “an application, either from the offender directly or through the Secretary of State” substitute “a reference”;
 - (f) in paragraph (5)—
 - (i) for the words “application under paragraphs (2) or (3)” substitute “reference”;
 - (ii) in sub-paragraph (b) for “application” substitute “reference”;
 - (g) in paragraph (6)—
 - (i) for “application” substitute “reference”;
 - (ii) in sub-paragraph (b) for the words “refuse the application” substitute “dismiss the reference”;
 - (h) after paragraph (6) insert—
 - “(6A) Where the reference has been made for an offender who is in prison having been recalled under section 32 of the 1997 Act, the panel must consider the reference in accordance with section 31A(4B) of that Act.”;
 - (i) for paragraph (7) substitute—
 - “(7) The decision under paragraph (6) or (6A) must—
 - (a) include the reasons for that decision; and
 - (b) if a hearing was directed under rule 31(5)(b), be provided to the offender and the Secretary of State within 14 days of that hearing.”;
 - (j) after paragraph (7) insert—

“(7A) Any decision made by the panel under paragraphs (6)(a), (6)(c) or (6A) is provisional, and becomes final if no application for reconsideration under rule 28 is received within the period specified by that rule.”.

(22) In Part B of the Schedule—

(a) before paragraph 1, insert—

“**1Z.**—(1) Reports relating to the prisoner should present all relevant information and a factual assessment pertaining to risk, as set out in the paragraphs of Part B of this Schedule, but the report writer must not present a view or recommendation as to the prisoner’s suitability for release or move to open prison conditions.

(2) Where considered appropriate, the Secretary of State will present a single view on the prisoner’s suitability for release.”;

(b) in paragraph 4, omit “, including views on suitability for release on licence as well as compliance with any sentence plan”;

(c) in paragraph 5—

(i) omit “or relevant Community Rehabilitation Company”;

(ii) omit sub-paragraph (I).

28th June 2022

Dominic Raab
Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Parole Board Rules 2019 (S.I. 2019/1038) by—

- amending rule 2 to update the definition of the Board chair to reflect the position is gender neutral, to remove the definition of direct application, to update the definition of extended sentence to include sentences imposed under the Sentencing Code and to add a definition of the new serious terrorism sentence;
- amending rule 4 to allow the Board chair to delegate a new function to staff so that they can direct the cases of recalled determinate sentence prisoners directly to an oral hearing;
- amending rule 5 as a consequence of the amendment made to rule 21 and to create a new type of panel for the consideration of setting aside final decisions under rule 28A;
- making provision in rules 6 and 7 for the Board to be able to hold case management conferences in addition to directions hearings, and make directions in respect of both;
- amending rule 12 to provide the Board chair may direct a different time frame for service of documents posted or despatched;
- amending rule 14 to bring together the provisions on observers and to provide that a victim or any other person may apply to the Board requesting admittance to an oral hearing;
- making provision in rule 15 for the Board to hold oral hearings in public where the Board chair considers that to be in the interests of justice;
- amending rule 17 to clarify the procedure relating to appeals of decisions regarding the withholding of information or reports; providing that the Secretary of State may withdraw any information the Board may otherwise direct be provided to a prisoner’s representative; and clarifying that any direction by the Board at a later date for disclosure of information that has been withheld under the rule is subject to a right of appeal and the right of the Secretary of State to withdraw the information;

- amending rules 19, 20, 21, 25, 28 and 31 with respect to the content and timing of decisions or advice issued by the Board;
- making provision in rule 21 for the Board to make a decision on the papers in place of an oral hearing if it considers an oral hearing is no longer necessary for reasons other than further evidence being received by the Board;
- making provision in rule 24 for the reasons the Board may exclude certain persons from an oral hearing or part of an oral hearing;
- amending rule 26 to provide for majority decision-making by any panel comprised of more than one member in circumstances other than only oral hearings;
- making provision in rule 27 for the disclosure of recommendations of the Board in a similar manner to disclosure of decisions and conferring greater discretion on the Board to permit or prohibit the disclosure, recording or publication of proceedings or information about proceedings;
- making provision in rule 28 for Board decisions to be reconsidered on the grounds the decision contains an error of law and for reconsideration to also apply to the new serious terrorism sentence imposed under the Sentencing Code and to decisions regarding the termination of IPP licences under rule 31.
- creating a new rule 28A to allow for the setting aside of final decisions where there has been an error of fact or law, or where new information has arisen or events have occurred that would have changed the decision had they occurred prior to the decision being made.
- amending rule 31 so that the consideration of whether an IPP prisoner’s licence should be terminated happens by automatic reference to the Board by the Secretary of State rather than the prisoner having to make a direct application to the Board.
- amending Part B of Schedule 1 to allow the Secretary of State to give a single view on suitability for release in certain cases.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

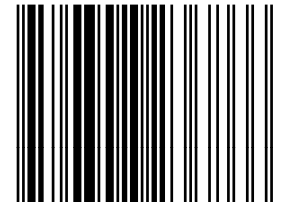
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