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STATUTORY INSTRUMENTS

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**1993 No. 2225 (S.235)**

**PRISONS, SCOTLAND**

**The Parole Board (Scotland) Rules 1993**

*Made* - - - - *9th September 1993*  
*Laid before Parliament* *10th September 1993*  
*Coming into force* - - *1st October 1993*

The Secretary of State, in exercise of the powers conferred upon him by section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(1), and of all other powers enabling him in that behalf, hereby makes the following Rules:

**PART I**  
**INTRODUCTION**

**Citation and commencement**

1. These Rules may be cited as the Parole Board (Scotland) Rules 1993 and shall come into force on 1st October 1993.

**Interpretation**

2.—(1) In these Rules, except where the context otherwise requires—

“the Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993;

“the Board” means the Parole Board for Scotland and includes, in relation to any case which is authorised by rule 14(2), 15(3) or 18(1) to be dealt with, in whole or in part, by a specified number of members of the Board, those members and any tribunal formed by those members under rule 18;

“case” shall be construed in accordance with paragraph (2) of this Rule and, in any Part of these Rules, means a case to which that Part applies;

“the chairman of the Board” means the chairman of the Board appointed under paragraph 1 of Schedule 2 to the Act but does not include the chairman of a tribunal;

“the chairman of a tribunal” means the chairman of a tribunal appointed under Rule 18(2);

- “damaging information” shall be construed in accordance with Rule 6(1);
- “Part IV case” means a case to which Part IV of these Rules applies by virtue of Rule 17;
- “parties”, in relation to a Part IV case, means the Secretary of State and the prisoner;
- “person concerned”, in relation to a case, means the person to whom the case relates;
- “prisoner”, in relation to a Part IV case, means—
- (a) a discretionary life prisoner within the meaning of section 2 of the Act; and
  - (b) a prisoner who is treated as such a discretionary life prisoner under or by virtue of section 10(1) or (3) or (5) of, or paragraph 6 of Schedule 6 to, the Act; and
- “tribunal” means a tribunal formed under Rule 18.

(2) Any reference in these Rules to a case or to the case of a person which is to be, or is being, dealt with by the Board means any case relating to a person in which the Board is to consider, or is considering any of the following matters, namely:—

- (a) whether to recommend the release on licence of that person under or by virtue of section 1(3) or (4) or 6(2) or 7(2) of the Act;
- (b) whether to direct the release on licence of that person under or by virtue of section 2(4) of the Act;
- (c) what advice to give to the Secretary of State when consulted by him under or by virtue of section 3(2) of the Act about the release of that person on licence on compassionate grounds;
- (d) what recommendations to be made under or by virtue of section 12(3)(a) of the Act as to the conditions to be inserted in the licence of a discretionary life prisoner;
- (e) what advice to give to the Secretary of State when consulted by him under or by virtue of section 12(3) of the Act about a proposal to insert, vary or cancel a condition in the licence granted to that person (but this shall not include any case where the Secretary of State is treated, by virtue of section 12(4) of the Act, as having consulted the Board about such a proposal);
- (f) whether to recommend the revocation of that person’s licence and his recall to prison under section 17(1) of the Act; and
- (g) whether to make a direction as to that person’s immediate release on licence under section 17(4) of the Act.

(3) Any reference in these Rules to a numbered rule or to a numbered Schedule means, unless the context otherwise requires, a reference to the Rule or the Schedule bearing that number in these Rules and any reference in a Rule to a numbered paragraph means, unless the context otherwise requires, a reference to the paragraph bearing that number in that Rule.

## PART II

### GENERAL

#### **Application**

3.—(1) Subject to paragraph (2) and except where otherwise expressly provided, this Part of these Rules shall apply to every case.

(2) In the application of this Part of the Rules to a case where the Board is to consider, or is considering, whether to recommend the revocation of a person’s licence and his recall to prison under section 17(1) of the Act—

- (a) Rules 4 and 7 shall not apply;
- (b) in Rule 5(1), the Secretary of State shall not be required—
  - (i) to include in the dossier which he sends to the Board all the information and documents specified in the Schedule to these Rules but only such as may be available to him at the time when he sends the dossier to the Board; or
  - (ii) to send the dossier to the person concerned; and
- (c) for the purposes of Rule 8(e), the Board may take into account in dealing with the case of that person, any information or documents contained in that dossier even although the person concerned has not received a copy of, or been given any opportunity to make written representations upon the dossier.

### **Reference**

4. Where a case of a person is referred to the Board by the Secretary of State, whether under section 1(5) or 2(5) or (6) of the Act or otherwise, the Secretary of State shall, at the same time as referring the case, give written notification of that reference to that person.

### **Secretary of State's dossier**

5.—(1) Subject to paragraph (2) and Rule 6, not later than 2 weeks after the date of the reference of the case to the Board, the Secretary of State shall send to the Board and to the person concerned a dossier containing any information in writing or documents which he considers to be relevant to the case, including the information and documents specified in the Schedule to these Rules.

(2) In relation to a Part IV case—

- (a) which is referred to the Board before 1st April 1994; and
- (b) where the person concerned is a prisoner who is treated as a discretionary life prisoner under or by virtue of paragraph 6 of Schedule 6 to the Act,

paragraph (1) shall apply as if there were substituted for the reference to 2 weeks a reference to 12 weeks.

### **Non disclosure of information**

6.—(1) This Rule applies where the Secretary of State considers that any written information or document contained in a dossier sent to the Board under Rule 5(1) or otherwise given to the Board should not be sent or disclosed to the person concerned because its disclosure would be likely to be damaging on one or more of the following grounds, namely:—

- (a) that it would be likely adversely to affect the health, welfare or safety of that person or any other person;
- (b) that it would be likely to result in the commission of an offence;
- (c) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;
- (d) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- (e) that it would be likely otherwise to damage the public interest,

and any such information or document is referred to in these Rules as “damaging information”.

(2) Where this Rule applies in any case—

- (a) the Secretary of State shall not be required to send a copy of the damaging information to the person concerned, whether under Rule 5(1) or otherwise;

- (b) the Board may take such damaging information into account under Rule 8(e) even although it has not been disclosed to the person concerned; and
  - (c) the Secretary of State shall send to the person concerned a written notice—
    - (i) informing him that certain information which has been sent to the Board has not been sent to him because the Secretary of State considers that the disclosure of that information would be likely to be damaging on one or more of the grounds mentioned in paragraph (1) above which is or are specified in the notice; and
    - (ii) giving that person, but only so far as is practicable without prejudicing the purposes for which that information is not disclosed, the substance or gist of the damaging information; and
    - (iii) informing him that the written representations which he may make under Rule 7 may include representations about the non disclosure of the damaging information,and the Secretary of State shall send a copy of that written notice to the chairman of the Board.
- (3) This Rule does not apply in a Part IV case.

### **Representations**

7. Not later than 4 weeks after the date when the Secretary of State sent to the person concerned the dossier under Rule 5(1), that person may send to the Board and, where he does so, shall send to the Secretary of State—

- (a) any representations in writing with respect to his case; and
- (b) any other information in writing or documents which he considers to be relevant to his case and wishes the Board to take into account.

### **Matters to be taken into account by the Board**

8. In dealing with a case of a person, the Board may take into account any matter which it considers to be relevant, including, but without prejudice to the foregoing generality, any of the following matters:—

- (a) the nature and circumstances of any offence of which that person has been convicted or found guilty by a court;
- (b) that person's conduct since the date of his current sentence or sentences;
- (c) the likelihood of that person committing any offence or causing harm to any other person if he were to be released on licence, remain on licence or be re-released on licence as the case may be;
- (d) what that person intends to do if he were to be released on licence, remain on licence or be re-released on licence, as the case may be, and the likelihood of his fulfilling those intentions; and
- (e) any written information or documents or written representations which the Secretary of State or the person concerned has sent to the Board under Rule 5 or 7 or which the Board has otherwise obtained.

### **Confidentiality**

9. Any information—
- (a) in connection with the proceedings before the Board or, in a Part IV case, a tribunal in dealing with a case;

(b) about any application, document or written or oral information given to the Board or to the tribunal; or

(c) about the name of any person concerned in the proceedings,

shall not be disclosed, either directly or indirectly, to any person not involved in those proceedings or to the public, except—

(i) insofar as the chairman of the Board or, in a Part IV case, the chairman of the tribunal otherwise direct; or

(ii) in connection with any court proceedings.

### **Time**

**10.**—(1) Where the time appointed by or under these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act shall be done in time if done on the next day which is not a Saturday, Sunday or public holiday.

(2) Any time appointed by or under these Rules for the doing of any act may be varied—

(a) in relation to a Part IV case, by the chairman of the tribunal under Rule 17(2) or 19(2); and

(b) in relation to any other case, by the Board on an application made to it for that purpose.

### **Sending of documents etc**

**11.** Any application, document, or other written material which is required or authorised by these Rules to be made, served, given, sent or otherwise transmitted to any person may be sent by facsimile transmission, pre-paid post or delivered—

(a) in the case where the intended recipient of the application, document or other written material is the Board, tribunal or chairman of a tribunal, to the office of the Board; and

(b) in any other case, to the last known address of the intended recipient.

### **Irregularities**

**12.**—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction under these Rules shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Board or, in a Part IV case, the tribunal, the Board or, as the case may be, the tribunal may, and shall, if it considers that any person may have been prejudiced by that irregularity, give such directions as it thinks fit before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a decision of the Board or, in a Part IV case, the tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairman of the Board, or, as the case may be, the chairman of the tribunal, by certificate under his hand.

## **PART III**

### **PROVISIONS APPLYING TO NON TRIBUNAL CASES**

#### **Application**

**13.** This Part of these Rules applies to any case other than a Part IV case.

### **Composition of Board**

14.—(1) Without prejudice to paragraph (2) and Rule 15(3), the powers of the Board may be exercised by any 3 members of the Board.

(2) Without prejudice to Rule 15(3), any case may be dealt with, in whole or in part, by any 3 members of the Board who are appointed by the chairman of the Board for the purpose of dealing with that case, in whole or in part.

### **Procedure**

15.—(1) Subject to the provisions of these Rules, the Board may regulate its own procedure in dealing with any case.

(2) The Board shall deal with any case on consideration of—

- (a) any written information, documents or written representations which the Secretary of State or the person concerned has sent to it under Rule 5 or 7;
- (b) any report of an interview conducted under paragraph (3); and
- (c) any other information obtained by it under paragraph (4).

(3) The person concerned shall be entitled to request an interview with the Board before it reaches a decision, and—

- (a) where he does so; or
- (b) where the Board considers it desirable to interview that person or any other person,

the chairman of the Board may authorise one or two members of the Board to conduct such an interview and to make a report thereon to the Board.

(4) In dealing with any case, the Board may request and consider information from any person and in any form.

### **Decision**

16. The decision of the Board may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority;

Provided that, where the Board is constituted by an even number of members, the chairman of the Board or other presiding member shall have a second or casting vote.

## **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 Secretary of State under section 2(5)(a) or (6) or 17(3) of the 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 Secretary of State under section 17(3) of the 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) 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) The members of a tribunal appointed under paragraph (1) shall include a person who holds or who has held judicial office and the chairman of the Board shall appoint that person to be chairman of the tribunal.

(3) 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 paragraph (2), 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 paragraph (2), 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 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 representative, the tribunal may, with his agreement, appoint someone to act on his behalf.

### Witnesses

23.—(1) Where a party wishes to call any witness or witnesses at the hearing he 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 witness or those witnesses to attend the hearing to give evidence.

(2) Any application under paragraph (1) shall give the name, address and occupation of each witness in respect of whom the application is made and a statement of what the general nature of his 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.



### **Other persons accompanying a party**

24.—(1) Where a party wishes to be accompanied at the hearing by another person or persons, in addition to any representative whom he may have authorised or who may have been appointed under Rule 22, he 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 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 and a statement of the reasons why he 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**

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

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

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

(3) Where the Secretary of State or any person responsible for the security of any building in which a hearing takes place considers 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 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) Without prejudice to Rule 23 or 24 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**

26.—(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 Secretary of State, his official or officials attending the hearing) and to the witnesses called by the other party;
- (c) to call any witnesses whom the tribunal has authorised to give evidence 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 could not be compelled to give or produce in proceedings before a court of law.

### **Decision**

**27.—**(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.

St Andrew's House,  
Edinburgh  
9th September 1993

*Fraser of Carmyllie*  
Minister of State, Scottish Office

## SCHEDULE

Rule 5

### INFORMATION AND DOCUMENTS TO BE SENT BY SECRETARY OF STATE TO THE BOARD

1. A note of the full name and the date of birth of the prisoner.
2. A note of the place in which the prisoner is detained and, in a Part IV case, of other places in which the prisoner has been detained; and a note of the date of, and reasons for, any transfer.
3. A note of the prisoner's current sentence or sentences and an indication of the circumstances of the offence or offences for which that sentence or those sentences were imposed.
4. A record of any other offences of which a court has found the prisoner guilty together with a note of the sentence or other disposal ordered on such findings.
5. In a Part IV case—
  - (a) a copy of the judgment of the High Court in any appeal by the prisoner against his current sentence or the conviction on which that sentence was imposed; and
  - (b) a written summary of any previous reviews of the prisoner's case by the Board and of the outcome of such reviews.
6. A copy of any report on the prisoner made while he was subject to a transfer direction under section 71 of the Mental Health (Scotland) Act 1984(2).
7. Up to date reports by those involved in supervising, caring for, or counselling the prisoner on the prisoner's circumstances (including home background) and behaviour and on his suitability for release or, as the case may be, re-release on licence.

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### EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules make provision with respect to the proceedings of the Parole Board for Scotland ("the Board"), in dealing with cases relating to a person ("the person concerned") under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the Act") which are specified in Rule 2(2).

Part II of the Rules makes general provisions which apply to every case except where otherwise expressly provided. They make provision for—

- (a) a dossier of information to be sent by the Secretary of State to the Board and, except in the case where the Board is considering whether to recommend the recall of a person who is released on licence (Rule 3(2)), to the person concerned (Rule 5 and the Schedule);
- (b) certain information not to be disclosed to the person concerned in certain cases (Rule 6);
- (c) the person to whom the case relates to make written representations (Rule 7);
- (d) the matters which may be taken into account by the Board in dealing with a case (Rule 8);
- (e) the confidentiality of proceedings before the Board (Rule 9);

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(2) 1984 c. 36.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (f) certain procedural matters, such as the time, the sending of documents and irregularities (Rules 10-12).

Part III of the Rules applies to all cases other than those dealt with under Part IV. They make provision for—

- (a) the composition of the Board in dealing with a case (Rule 14);
- (b) the procedure to be followed by the Board (Rule 15); and
- (c) the manner in which decisions may be taken by the Board (Rule 16).

Part IV of the Rules applies to the case of any discretionary life prisoner and any prisoner who, under the Act, falls to be treated as a discretionary life prisoner, which is referred to the Board by the Secretary of State under section 2(5)(a) or (6) or 17(3) of the Act. They make provision for—

- (a) the composition of the tribunal to deal with the case (Rule 18);
- (b) the general procedure to be followed, including, if need be, a preliminary hearing (Rule 19);
- (c) a hearing of the case, unless both the Secretary of State and the prisoner (“the parties”) and the tribunal otherwise agree (Rule 20);
- (d) notice of the hearing (Rule 21);
- (e) a party to be represented (Rule 22);
- (f) a party to call a witness (Rule 23);
- (g) a party to be accompanied by other persons (Rule 24);
- (h) as to who may attend the hearing (Rule 25);
- (i) the procedure at the hearing (Rule 26); and
- (j) the manner in which decisions may be taken by the tribunal and notified (Rule 27).