
STATUTORY INSTRUMENTS

2019 No. 1038

The Parole Board Rules 2019

PART 3

Parole Board proceedings

Referral and service of reports

16.—(1) A case is deemed to be referred to the Board on the date that the Board receives the referral letter and the information and reports required under paragraph (3) from the Secretary of State.

(2) The Secretary of State must serve the information and reports required under paragraph (3) on the prisoner (and the prisoner’s representative if they are represented) at the same time as service on the Board.

(3) Subject to rule 17, the Secretary of State must serve on the Board and the prisoner (and the prisoner’s representative if they are represented)—

- (a) the information specified in the Schedule;
- (b) any further information which the Secretary of State considers relevant to the case, and
- (c) where a case relates to a request for advice, any information which the Secretary of State considers relevant to the case.

Withholding information or reports

17.—(1) The Secretary of State and any third party authorised by the Secretary of State (“authorised third party”) may apply to the Board for information or any report (“the material”) to be withheld from the prisoner, or from both the prisoner and their representative, where the Secretary of State or the authorised third party considers—

- (a) that its disclosure would adversely affect—
 - (i) national security;
 - (ii) the prevention of disorder or crime, or
 - (iii) the health or welfare of the prisoner or any other person, and
- (b) that withholding the material is a necessary and proportionate measure in the circumstances of the case.

(2) An application under paragraph (1) may not be made later than 8 weeks before the date allocated for an oral hearing under rule 22.

(3) Where the Secretary of State or the authorised third party makes an application for the material to be withheld under paragraph (1), the Secretary of State or authorised third party must serve on the Board—

- (a) the material, or a separate document containing the material, and
- (b) a written application for non-disclosure, explaining why it is proposed to be withheld.

(4) On receipt of an application under paragraph (3)(b), either a panel chair or duty member appointed for that purpose, must consider the application and may make directions as necessary to enable determination of the application.

(5) Where the panel chair or duty member is satisfied that all relevant information has been served on the Board, they must consider the application and direct that the material should be—

- (a) served on the prisoner and their representative (if applicable) in full;
- (b) withheld from the prisoner or from both the prisoner and their representative, or
- (c) disclosed to the prisoner, or to both the prisoner and the prisoner's representative (if applicable) in the form of a summary or redacted version.

(6) If—

- (a) a direction is given under paragraph (5)(a) and the Secretary of State or authorised third party intends to appeal against it in accordance with paragraph (11), or
- (b) a direction is given under paragraph (5)(b) or (c),

the Secretary of State, or the Board (where an authorised third party made the application under paragraph (3)), must, as soon as practicable, notify the prisoner and the prisoner's representative (if applicable) that an application has been made under paragraph (3)(b) and the direction that has been made under paragraph (5).

(7) If the panel chair or duty member appointed under paragraph (4) gives a direction under paragraph (5)(b) or (c) that relates only to the prisoner, and that prisoner has a representative, the Secretary of State or authorised third party must, subject to paragraphs (10) and (11), serve the material as soon as practicable (unless the panel chair or duty member directs otherwise) on the prisoner's representative, if the representative is—

- (a) a barrister or solicitor;
- (b) a registered medical practitioner, or
- (c) a person whom the panel chair or duty member appointed under paragraph (4) directs is suitable by virtue of their experience or professional qualifications.

(8) The panel chair or duty member may direct the appointment of a special advocate appointed by the Attorney General to represent the prisoner's interests where the panel chair or duty member appointed under paragraph (4)—

- (a) makes a direction under (5)(a) and the Secretary of State or the authorised third party appeals the direction under paragraph (11), or
- (b) makes a direction under (5)(b) or (c) that relates to a prisoner and their representative, or the prisoner does not have a representative.

(9) If a direction to appoint a special advocate is made under paragraph (8), the Secretary of State or authorised third party must serve the material as soon as practicable (unless the panel chair or duty member directs otherwise) on the special advocate.

(10) The material must not be disclosed to the prisoner's representative under paragraph (7) unless the prisoner's representative first gives an undertaking to the Board that the prisoner's representative will not, without the consent of the panel chair or duty member, disclose it to the prisoner or to any other person.

(11) Within 7 days of notification by the Secretary of State or Board in accordance with paragraph (6), either party or the authorised third party may appeal against that direction to the Board chair and notify the other party of the application to appeal.

(12) If the Secretary of State or authorised third party appeals the direction in accordance with paragraph (11), the Secretary of State or authorised third party need not serve the material under paragraphs (5) or (7) until the appeal is determined.

(13) Where a direction is made under paragraph (5)(b) or (c) to withhold material from a prisoner who does not have a representative, the decision will automatically be considered in an appeal to the Board chair.

(14) Within 7 days of being notified that a party has appealed under paragraph (11), the other party may make representations in respect of the appeal to the Board chair.

(15) If—

(a) a panel chair or duty member appointed under paragraph (4) to determine an application under paragraph (1), or

(b) the Board chair determining an appeal under paragraph (11) or (13),

decides that any material which is subject to the application by the Secretary of State or authorised third party under paragraph (1) should be disclosed to the prisoner (in full or in the form of a summary or redacted version), the Secretary of State or authorised third party may withdraw the material within 7 days of that decision.

(16) If the Secretary of State or authorised third party withdraws any material in accordance with paragraph (15), no one who has seen that material may be a member of a panel which determines the case.

Representations by and evidence of the parties

18.—(1) A party who wishes to make representations to the Board must serve them on the Board and the other party—

(a) within 4 weeks of the case being referred to the Board where the case relates to the initial release of a prisoner, or

(b) at the time of referral if the case relates to the release following recall of a prisoner.

(2) Any additional evidence that a party wishes to present at an oral hearing must be served on the Board and the other party at least 14 days before the date of the oral hearing.

(3) Any party that wishes to present at an oral hearing documentary evidence which has not been served at least 14 days before the date of the hearing, must serve the material on the Board and the other party, together with an application to the panel chair or duty member for permission to do so, as soon as reasonably practicable, and must, as part of that application, give reasons for late service.

Consideration on the papers

19.—(1) Where a panel is appointed under rule 5(1) to consider the release of a prisoner, the panel must decide on the papers either that—

(a) the prisoner is suitable for release;

(b) the prisoner is unsuitable for release, or

(c) the case should be directed to an oral hearing.

(2) Where a panel has received a request for advice from the Secretary of State concerning whether a prisoner should move to open conditions, the panel must recommend whether—

(a) the prisoner is suitable for a move to open conditions, or

(b) the prisoner is not suitable for a move to open conditions.

(3) Where a panel makes a decision that the case should be directed to an oral hearing under this rule, the panel may at the same time make any directions relating to the oral hearing.

(4) Any decision made under paragraph (1)(a) which is eligible for reconsideration under rule 28 is provisional, and becomes final if no application for reconsideration is received within the period specified by that rule.

(5) Any decision made under paragraph (1)(a) which is not eligible for reconsideration under rule 28 is final.

(6) Any decision made under paragraph (1)(b) is provisional.

(7) Where the Board receives a request for advice with respect to any matter referred to it by the Secretary of State, the Board may advise or make a recommendation to the Secretary of State without an oral hearing.

(8) The decision or advice of the panel must be recorded in writing with reasons for that decision or advice, and the written record provided to the parties within 14 days of that decision or advice.

Procedure after a provisional decision on the papers

20.—(1) Where a panel appointed under rule 5(1) has made a decision that a prisoner is unsuitable for release under rule 19(1)(b), the prisoner may apply in writing for a panel at an oral hearing to determine the case.

(2) A prisoner who makes an application under paragraph (1) must serve the application, together with reasons for making an application, on the Board and the Secretary of State, within 28 days of the provision of the written record under rule 19(8).

(3) If no application has been served by the prisoner under paragraph (2) after the expiry of the period specified by that paragraph, a provisional decision made under rule 19(1)(b)—

- (a) remains provisional if it is eligible for reconsideration under rule 28, and becomes final if no application for reconsideration is received within the period specified by that rule, or
- (b) becomes final if it is not eligible for reconsideration under rule 28.

(4) Where no application is served by a prisoner under paragraph (2), the decision must be provided to the parties by the Board within 35 days of the written record under rule 19(8).

(5) If an application is served in accordance with paragraph (2), the decision about whether the case should be determined at an oral hearing must be taken by a member of the Board who—

- (a) is a duty member, and
- (b) was not part of the constituted panel appointed under rule 5(1) who made the provisional decision.

(6) If the decision taken under paragraph (5) is that the case should not be determined at an oral hearing, a provisional decision under rule 19(1)(b)—

- (a) remains provisional if it is eligible for reconsideration under rule 28 and becomes final if no application for reconsideration is received within the period specified by that rule, or
- (b) becomes final if it is not eligible for reconsideration under rule 28.

(7) Where the decision taken under paragraph (5) is that the case should not be determined at an oral hearing, that decision must be provided to the parties by the Board within 35 days of the written record under rule 19(8).

(8) A decision under paragraph (5) cannot be deferred or adjourned by a panel chair or duty member under rule 6 and the time limit in paragraph (7) cannot be extended under rule 9.

Decision on the papers after a direction for an oral hearing

21.—(1) Subject to the provisions of this rule, where further evidence is received by the Board after a panel have directed that a case should be determined at an oral hearing under rule 19(1)(c) or 20(5), a panel chair or duty member can direct that the case should be decided on the papers if an oral hearing is no longer necessary.

(2) Where further evidence is received under paragraph (1), the Board must notify the parties of the receipt of the evidence as soon as practicable.

(3) Within 14 days of notification of the receipt of further evidence under paragraph (2), the parties may make representations on—

- (a) the contents of the further evidence, and
- (b) whether they agree to the case being decided by a panel on the papers.

(4) After the 14-day period for the parties to make representations under paragraph (3), the panel chair or duty member will consider the further evidence and any representations made, and make a direction that the case should—

- (a) be decided by a panel on the papers, or
- (b) continue to be determined by a panel at an oral hearing under rule 25.

(5) Where a direction is made under paragraph (4)(a) for a decision to be made by a panel on the papers under paragraph (7), the panel may be constituted of the panel chair who made the direction or by a new panel appointed under rule 5(3).

(6) A direction for a case to be decided on the papers under paragraph (4)(a) cannot be made where there is less than 3 weeks until the oral hearing.

(7) Where a direction is made that the case should be decided on the papers under paragraph (4)(a), the panel must decide either that—

- (a) the prisoner is suitable for release, or
- (b) the prisoner is not suitable for release.

(8) Any decision made under paragraph (7) is provisional if it is eligible for reconsideration under rule 28, and becomes final if no application for reconsideration is received within the period specified by that rule.

(9) Any decision made under paragraph (7) which is not eligible for reconsideration under rule 28 is final.

(10) Where a panel chair or duty member receives a request for advice from the Secretary of State concerning whether a prisoner should move to open conditions, the panel chair must recommend whether—

- (a) the prisoner is suitable for a move to open conditions, or
- (b) the prisoner is not suitable for a move to open conditions.

(11) Where the Board receive a request for advice with respect to any matter referred to it by the Secretary of State, any recommendation made in respect of that request is final.

(12) The decision under paragraph (7) and/or recommendation under paragraph (10) must be recorded in writing with reasons for that decision and/or recommendation, and the written record provided to the parties within 14 days of that decision and/or recommendation.

Notice of an oral hearing

22.—(1) Before fixing the date of the oral hearing the Board must consult the parties.

(2) Within 1 week of a case being listed, the Board must notify the parties of the date of the oral hearing.

(3) The Board must give the parties reasonable notice of the date, time and place of the hearing.

(4) Where notification is less than 12 weeks then the Board must review any other affected timescale.

(5) Notification of less than 3 weeks must be agreed with both parties.

(6) If applicable, the Board must give the parties notice that the hearing will be held via video link, telephone conference or other electronic means.

Notification by prisoner

- 23.—(1) A prisoner must notify the Board and the Secretary of State if—
- (a) the prisoner does not want a panel at an oral hearing to consider the case, or
 - (b) the prisoner does not want to attend an oral hearing which has been listed.
- (2) An oral hearing may take place in the absence of a prisoner where—
- (a) a prisoner has notified the Board in accordance with paragraph (1);
 - (b) a represented prisoner has not notified the Board in accordance with paragraph (1) but the prisoner's representative is in attendance;
 - (c) a represented prisoner has not notified the Board in accordance with paragraph (1) and neither the prisoner nor the prisoner's representative are present at the hearing.

Oral hearing procedure

- 24.—(1) At the beginning of the oral hearing the panel chair must—
- (a) explain the order of proceedings which the panel plans to adopt, and
 - (b) invite each party present to state their view as to the suitability of the prisoner for release or for transfer to open conditions, as applicable.
- (2) The panel—
- (a) must avoid formality during the hearing;
 - (b) may ask any question to satisfy itself of the level of risk of the prisoner, and
 - (c) must conduct the hearing in a manner it considers most suitable to the clarification of the issues before it and to the just handling of the proceedings.
- (3) The parties are entitled to—
- (a) take such part in the proceedings as the panel thinks fit;
 - (b) hear each other's witnesses and representations;
 - (c) put questions to each other;
 - (d) call a witness who has been given written notification in accordance with rule 13, and
 - (e) question any witness appearing before the panel.
- (4) If, in the opinion of the panel chair, any person at the hearing is behaving in a disruptive manner, the panel chair may require that person to leave.
- (5) The panel chair may permit a person who was required to leave under paragraph (4) to return on such conditions as the panel chair may specify.
- (6) A panel may produce or receive in evidence any document or information whether or not it would be admissible in a court of law.
- (7) No person is compelled to give any evidence or produce any document which they could not be compelled to give or produce on the trial of an action.
- (8) The panel chair may require any person present to leave 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.
- (9) After all the evidence has been given, if the prisoner is present at the hearing, the prisoner must be given an opportunity to address the panel.

Decision by a panel at an oral hearing

25.—(1) Where a panel has considered a prisoner’s case at an oral hearing, the panel must decide either that—

- (a) the prisoner is suitable for release, or
- (b) the prisoner is unsuitable for release.

(2) Any decision made by the panel under paragraph (1) which is eligible for reconsideration under rule 28 is provisional, and becomes final if no application for reconsideration is received within the period specified by that rule.

(3) Any decision made by the panel under paragraph (1) which is not eligible for reconsideration under rule 28 is final.

(4) Where a panel receives a request for advice from the Secretary of State concerning whether a prisoner should move to open conditions, the panel must recommend either that—

- (a) the prisoner is suitable for a move to open conditions, or
- (b) the prisoner is not suitable for a move to open conditions.

(5) Where the Board receives a request for advice with respect to any matter referred to it by the Secretary of State, any recommendation made in respect of that request is final.

(6) The decision under paragraph (1) and/or recommendation under paragraph (4) must be recorded in writing with reasons, and that record must be provided to the parties not more than 14 days after the end of the hearing.

(7) The recorded decision and/or recommendation must refer only to the matter which the Secretary of State referred to the Board.

Decision making by a panel at an oral hearing

26.—(1) Where a panel has been appointed under rule 5(2), a decision of the majority of the members of the panel is the decision of the oral panel.

(2) A panel for an oral hearing that is unable to reach a decision in accordance with paragraph (1) must be dissolved by the Board chair, who must then appoint a new panel.

Summaries and disclosure

27.—(1) Where a victim or any other person seeks disclosure of a summary of the reasons for a decision—

- (a) made under rule 19(1)(a), 21(7), 25(1) or 31(6);
- (b) made under rule 19(1)(b) where a prisoner does not make an application for an oral hearing under rule 20(1), or a prisoner makes an application for an oral hearing but it is decided that the case should not be considered at an oral hearing under rule 20(6),

the Board must produce a summary of the reasons for that decision, unless the Board chair considers that there are exceptional circumstances why a summary should not be produced for disclosure.

(2) The Board is not required to produce a summary under paragraph (1) where the request is made more than 6 months after the decision.

(3) Where a victim seeks disclosure of a summary produced under paragraph (1), the Secretary of State must notify the Board that the victim wishes to receive a summary, and must disclose the summary that is produced by the Board to that victim.

(4) Where any other person seeks disclosure of a summary under paragraph (1), the Board must disclose the summary that is produced to that person.

(5) Subject to paragraph (1), information about proceedings under these Rules must not be disclosed, except insofar as the Board chair directs.

(6) Other than those of the parties, the names of persons concerned in proceedings under these Rules must not be disclosed under paragraphs (1) to (5).

(7) A contravention of paragraphs (5) or (6), is actionable as a breach of statutory duty by any person who suffers loss or damage as a result.

(8) For the purposes of this rule—

“victim” means a person who is participating in the Victim Contact Scheme in respect of a prisoner who is party to proceedings under these Rules;

“Victim Contact Scheme” means the scheme set out in the Victims’ Code in accordance with section 32 of the Domestic Violence, Crime and Victims Act 2004⁽¹⁾.

Reconsideration of decisions

28.—(1) Subject to paragraph (2), where a decision has been made under rule 19(1)(a) or (b), 21(7) or 25(1), a party may apply to the Board for the case to be reconsidered on the grounds that the decision is—

- (a) irrational, or
- (b) procedurally unfair.

(2) Decisions are eligible for reconsideration only where the prisoner is serving—

- (a) an indeterminate sentence;
- (b) an extended sentence;
- (c) a determinate sentence subject to initial release by the Board under Chapter 6 of Part 12 of the 2003 Act.

(3) An application for a provisional decision to be reconsidered under paragraph (1) must be made and served on the other party no later than 21 days after the written decision recorded under rules 19(8), 21(12) or 25(6) is provided to the parties.

(4) Where a party makes an application under paragraph (3), the other party may make representations, and those representations must be provided to the Board and the party who made the application within 7 days of service of the application.

(5) Where an application made under paragraph (3) is received by the Board, the application must be considered on the papers by an assessment panel.

(6) After assessing the application under paragraph (5), the assessment panel must—

- (a) direct that the provisional decision should be reconsidered, or
- (b) dismiss the application.

(7) The assessment panel may direct that the provisional decision should be reconsidered under paragraph (6)(a) only if it has identified a ground for reconsideration under paragraph (1).

(8) Where the assessment panel dismiss the application under paragraph (6)(b), the provisional decision becomes final.

(9) Where the assessment panel directs that the provisional decision should be reconsidered under paragraph (6)(a), the assessment panel must direct that the case should be—

- (a) reconsidered on the papers by the previous panel or a new panel appointed under rule 5(1), or

(1) 2004 c. 28. Section 33(6) requires the Code to be laid before Parliament and was amended by paragraph 10(2) of Schedule 1 to the Secretary of State for Justice Order 2007 (S.I. 2007/2128).

(b) reconsidered at an oral hearing by the previous panel or a new panel appointed under rule 5(2).

(10) The decision of the assessment panel must be recorded in writing with reasons, and that record must be provided to the parties not more than 14 days after the decision.

Error of Procedure

29. Where there has been an error of procedure by either party or by the Board, including a failure to comply with a rule—

- (a) the error does not invalidate any step taken in the proceedings unless the member appointed by the Board for this purpose, being either a panel chair or duty member, directs otherwise, either on the application of a party or in the course of conducting the proceedings, and
- (b) the panel chair or duty member may make a direction or take any other step that it considers appropriate.

Slip Rule

30.—(1) The Board may at any time correct an accidental slip or omission in a decision.

(2) A party may apply for a correction without notice.