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STATUTORY INSTRUMENTS

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**1998 No. 1859**

**The Northern Ireland (Sentences) Act 1998  
(Sentence Review Commissioners) Rules 1998**

**PART IV**

**CONSIDERATION AND DETERMINATION OF APPLICATIONS**

**Ancillary decisions**

**11.—(1)** The Commissioners may take any ancillary decision they consider appropriate including:

- (a) the grant or refusal of leave to do any act;
- (b) the giving, variation or revocation of any direction as to the conduct of the case in respect of matters such as—
  - (i) the timetable for the case,
  - (ii) the varying of the time within which or by which an act, required or authorised by these Rules, be done,
  - (iii) the service of documents,
  - (iv) the submission and production of evidence,
  - (v) the curing or waiving of irregularities,
  - (vi) the listing, location and adjournment of hearings,
  - (vii) the readiness of the case for being made the subject of a preliminary indication;
- (c) the giving or refusal of legal aid directions; and
- (d) the appointment of representatives.

(2) The Commissioners may take ancillary decisions of their own motion, pursuant to an application made during the course of a hearing, or an ancillary application made in accordance with rule 12 (in which case the single Commissioner shall determine the application as provided by rule 12(5)).

(3) Subject to paragraph (5), the Commissioner shall serve written notice of any ancillary decision on the parties.

(4) Where a party makes an application for an ancillary decision during the course of a hearing, the panel shall consider whether to adjourn the hearing in order to allow the other party to respond to the application.

(5) Where the Panel takes an ancillary decision during the course of a hearing they shall inform the parties of this orally and the requirement to serve written notice of the ancillary decision shall not apply.

(6) Where the panel takes an ancillary decision, whether in determining an ancillary appeal or otherwise, their decision shall be final.

### **Ancillary applications**

12.—(1) A party may apply by way of ancillary application for the Commissioner to take an ancillary decision by serving on the Commissioner and on the other party a notice of ancillary application in an appropriate form.

(2) The notice of ancillary application shall specify the ancillary decision sought, shall state the grounds upon which the application is based, and shall be signed by the party making the ancillary application or by his representative.

(3) Within seven days of receiving a notice of ancillary application a party may reply by serving on the Commissioner and on the other party a notice of reply in an appropriate form.

(4) The notice of reply shall state any points considered to be of relevance and shall be signed by the party replying to the ancillary application or by his representative.

(5) As soon as is practicable after the expiry of the time for service of the notice of reply, the single Commissioner shall determine the ancillary application without a hearing and shall serve written notice of his decision on the parties, giving reasons.

### **Ancillary appeals**

13.—(1) A party may appeal against an ancillary decision taken by a single Commissioner by serving on the Commissioner and on the other party, within seven days of receiving written notice of the ancillary decision, a notice of ancillary appeal in an appropriate form.

(2) The notice of ancillary appeal shall state the grounds upon which the ancillary appeal is based and shall be signed by the party bringing the ancillary appeal or by his representative.

(3) Within seven days of receiving a notice of ancillary appeal a party may reply by serving on the Commissioner and on the other party a notice of reply in an appropriate form.

(4) The notice of reply shall state any points considered to be of relevance and shall be signed by the party replying to the ancillary appeal or by his representative.

(5) As soon as is practicable after the expiry of the time for service of the notice of reply, the panel shall determine the ancillary appeal pursuant to an ancillary hearing and (subject to rule 11(5)), shall serve written notice of their decision on the parties, giving reasons.

### **The preliminary indication**

14.—(1) Following receipt of the response papers, the single Commissioner shall take any ancillary decisions he considers appropriate and when satisfied that it is appropriate to do so he shall then give a direction that the case is ready to be made the subject of a preliminary indication.

(2) After the expiry of seven days from service on the parties of written notice of the direction given pursuant to paragraph (1), the panel shall give the preliminary indication in accordance with the provisions of this rule.

(3) The preliminary indication shall be given without a hearing and shall only be given if the following conditions are satisfied in relation to the case:

- (a) any irregularities have been cured or waived in accordance with rule 27;
- (b) there are no outstanding ancillary applications or ancillary appeals to be determined; and
- (c) the time for bringing an ancillary appeal against any ancillary decision has expired.

(4) The preliminary indication shall indicate the substantive determination that the panel are minded to make and shall be given by being recorded in a written decision notice, signed and dated by or on behalf of the members of the panel.

(5) The Commissioners shall serve a copy of the written decision notice on the parties as soon as is practicable after giving the preliminary indication and this shall contain, subject to rule 22, the following:

- (a) where the preliminary indication is that the panel is minded to refuse an application made under section 3(1) of the Act, a statement of the reasons for this;
- (b) where the preliminary indication is that the panel is minded to grant an application made under section 3(1) of the Act, a declaration specifying:
  - (i) the sentences in respect of which the person concerned would be eligible to be released in accordance with the provisions of the Act if the preliminary indication were to become the substantive determination; and
  - (ii) in relation to each life sentence in respect of which the person concerned would be eligible to be released if the preliminary indication were to become the substantive determination, the day which the Commissioner are minded to believe would mark the completion of the period specified in section 6(1) of the Act;
- (c) where the preliminary indication is that the panel is minded to grant an application made under section 8(1) of the Act, a statement of the reasons for this and a statement that any declaration previously granted to the person concerned under section 4 or 6 of the Act would be revoked if the preliminary indication were to become the substantive determination; and
- (d) where the person concerned is a recalled prisoner, a statement as to whether the panel is minded to confirm or revoke the recalled prisoner's licence, and a statement of the reasons for this.

(6) Within 14 days of receiving a copy of the written decision notice, each party shall serve on the Commissioner and on the other party a written notice, signed by him or by his representative, stating whether or not he wishes to challenge the preliminary indication.

### **The substantive determination**

**15.—**(1) After the preliminary indication has been given, the panel shall make the substantive determination in accordance with the provisions of this rule.

(2) Where both parties have indicated, in accordance with rule 14(6), that they do not wish to challenge the preliminary indication, the panel shall make the substantive determination that it was minded to make when it gave the preliminary indication.

(3) Where either party indicates, in accordance with rule 14(6), that he wishes to challenge the preliminary indication, the panel shall disregard the preliminary indication and shall make the substantive determination pursuant to a substantive hearing.

(4) The substantive determination shall be made by being recorded in a written decision notice, signed and dated by or on behalf of the members of the panel.

(5) The Commissioners shall serve a copy of the written decision notice on the parties as soon as is practicable after making the substantive determination and this shall contain, subject to rule 22, the following:

- (a) where an application made under section 3(1) of the Act has been refused, a statement of the reasons for this;
- (b) where an application made under section 3(1) of the Act has been granted, a declaration specifying:
  - (i) the sentences in respect of which the person concerned is eligible to be released in accordance with the provisions of the Act; and

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- (ii) in relation to each life sentence in respect of which the person concerned is eligible to be released, the day which the Commissioner believe marks the completion of the period specified in section 6(1) of the Act;
- (c) where an application made under section 8(1) of the Act has been granted, a statement of the reasons for this and a statement that any declaration previously granted to the person concerned under section 4 or 6 of the Act is thereby revoked; and
- (d) where the person concerned is a recalled prisoner, a statement as to whether the recalled prisoner's licence has been confirmed or revoked, and a statement of the reasons for this.