

**2009 No. 408**

**PRISONS, ENGLAND AND WALES**

**The Parole Board (Amendment) Rules 2009**

*Made* - - - - *25th February 2009*

*Laid before Parliament* *2nd March 2009*

*Coming into force* - - *1st April 2009*

The Secretary of State, in exercise of the power 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 2009 and shall come into force on 1<sup>st</sup> April 2009.

(2) In these Rules, “the 2004 Rules” means the Parole Board Rules 2004(b).

**Amendments to the 2004 Rules**

2. The 2004 Rules are amended as follows.

3. In arrangement of rules, for “13. Provisional decision in favour of release: consideration by three member paper panel” substitute “13. Consideration by an oral panel”.

4. In rule 2 (application and interpretation)—

(a) after the definition of “governor” insert—

““ICM member” means a member of the Board accredited by the Board to manage cases in accordance with the Board’s intensive case management system”;

(b) omit the definition of “three member paper panel”; and

(c) for “three member oral panel” substitute “oral panel”.

5. In rule 3 (appointment of panels)—

(a) omit paragraph (2);

(b) in paragraph (3)—

(i) omit “Subject to paragraph (6) below,”;

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(a) 2003 c. 44.

(b) The 2004 Rules were made under an enabling power in section 32(5) of the Criminal Justice Act 1991 (c. 53) which was not exercisable by statutory instrument. Section 32(5) was repealed by the Criminal Justice Act 2003 (c. 44) (“the 2003 Act”), sections 303(a) and 332 and Part 7 of Schedule 37, and was re-enacted in section 239(5) of the 2003 Act, albeit that rules made under section 239(5) are subject to the negative resolution procedure. By virtue of section 17(2)(b) of the Interpretation Act 1978 (c. 30), the 2004 Rules have effect as if they were made under section 239(5) of the 2003 Act.

- (ii) for “three” substitute “one or more”; and
  - (iii) after “with a hearing.” insert “In respect of a hearing in the case of a prisoner serving an automatic life sentence, a mandatory life sentence, a discretionary life sentence, or a sentence during Her Majesty’s pleasure, the oral panel shall consist of or include a sitting or retired judge.”;
  - (c) in paragraph (4) omit “, (2)”;
  - (d) in paragraph (5)—
    - (i) omit “Subject to paragraph (6) below,”; and
    - (ii) after “of that panel.” insert “In relation to any panels comprising two or more members formed under paragraph (3) above that include a sitting or retired judge, that person shall act as chair of the panel.”; and
  - (e) omit paragraph (6).
- 6.** In rule 8 (directions)—
- (a) in paragraph (1) for “the chair of the panel may at any time” substitute “an ICM member may at any time prior to the appointment of a panel, and the chair of such panel may at any time after the panel is appointed,”;
  - (b) in paragraph (4)—
    - (i) in sub-paragraph (a) before “the chair of the panel’s” insert “ the ICM member’s or”;
    - and
    - (ii) after “to make written representations, or” insert “after a panel has been appointed and”.
- 7.** In rule 9 (adjournment), in paragraph (3) for “a three member” substitute “an”.
- 8.** In rule 10 (panel decisions)—
- (a) in paragraph (1) omit “(2) or”;
  - and
  - (b) for paragraph (2) substitute—
 

“(2) A panel that is unable to reach a decision in accordance with paragraph (1) shall be dissolved by the Chairman, who shall then appoint a new panel.”
- 9.** In rule 11 (consideration by single member panel)—
- (a) in paragraph (2)(a), for “be considered by a three member oral panel” substitute “receive further consideration by an oral panel”;
  - and
  - (b) in paragraph (2)(b), for “as to the prisoner’s suitability” substitute “that the prisoner is unsuitable”.
- 10.** In rule 12 (provisional decision against release)—
- (a) in paragraph (1), for “require a three member” substitute “request an”;
  - and
  - (b) in paragraph (2)—
    - (i) for “require” substitute “request”;
    - and
    - (ii) after “notice to that effect” insert “, giving full reasons for the request,”.
- 11.** For rule 13 (provisional decision in favour of release: consideration by three member paper panel) substitute—

“Consideration by an oral panel

**13.** In any case where the single member panel has referred the case to an oral panel for further consideration under rule 11(2)(a) or where a hearing has been ordered pursuant to a request under rule 12(2), the case must be considered by an oral panel within 26 weeks of the case having been originally listed.”

12. In rule 14 (general provisions)—

(a) in paragraph (1)—

(i) omit “or 13(2)(a)”; and

(ii) for “notice” substitute “hearing has been ordered pursuant to a request”; and

(iii) omit “or 13(5) has been served”.

(b) omit paragraph (2); and

(c) in paragraph (4), for “a three member” substitute “an”.

13. In rule 20 (the decision), for “7” substitute “14”.

### **Transitional provision**

14. The amendments made by these Rules do not apply in relation to any hearing which begins prior to 1<sup>st</sup> April 2009. For the avoidance of doubt, any hearing which begins prior to 1<sup>st</sup> April 2009, and is adjourned to 1<sup>st</sup> April 2009 or later, is a hearing to which the amendments made by these Rules do not apply.

Signed by the authority of the Secretary of State

25th February 2009

*Bridget Prentice*  
Minister of State  
Ministry of Justice

### **EXPLANATORY NOTE**

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

The purpose of these Rules is to provide the Parole Board with greater flexibility in deploying its resources to better cope with an increasing number of cases referred to it.

These Rules are made under section 239(5) of the Criminal Justice Act 2003 and amend the Parole Board Rules 2004 (“the 2004 Rules”). The 2004 Rules set out the procedure to be adopted by the Parole Board when dealing with cases referred to it by the Secretary of State under sections 28(6)(a), 28(7) or 32(4) of the Crime (Sentences) Act 1997 or under sections 39(4) or 44A(2) of the Criminal Justice Act 1991.

Rule 3 amends the arrangement of rules of the 2004 Rules to reflect the change of heading of rule 13 to “Consideration by an oral panel”.

Rule 4 amends rule 2 of the 2004 Rules to add the definition of “ICM member”, remove the definition of “three member paper panel” and change the defined term “three member oral panel” to the defined term “oral panel”.

Rule 5 amends rule 3 of the 2004 Rules to remove the need for three person paper panels and to allow oral panels to be formed of one or more members instead of always being formed of three members. It also removes the requirement for all oral panels to be chaired by a legally qualified member and adds a requirement for all oral panels formed to hear the case of a prisoner serving an automatic life sentence, a mandatory life sentence, a discretionary life sentence, or a sentence during Her Majesty’s pleasure to be chaired by a sitting or retired judge.

Rule 6 amends rule 8 of the 2004 Rules to allow members of the Board who have been accredited in accordance with the Board’s intensive case management system to make directions prior to the appointment of a panel to consider the case.

Rule 7 amends a reference to a “three member oral panel” in rule 9 of the 2004 Rules to refer to an “oral panel”.

Rule 8 amends rule 10 of the 2004 Rules to remove a reference to three member paper panels and to require the Chairman to dissolve any oral panel that is unable to reach a majority decision and form a new oral panel in respect of that case.

Rule 9 amends rule 11 of the 2004 Rules to specify the two decisions a single member panel can take. A single member panel can either decide that a case should receive further consideration by an oral panel, or make a provisional decision that the prisoner is unsuitable for release.

Rule 10 amends rule 12 of the 2004 Rules so that where a single member panel has made a provisional decision that the prisoner is unsuitable for release under rule 11(2)(b) of the 2004 Rules, the prisoner can request but can no longer require an oral panel to consider his case. The prisoner must provide full reasons for such a request.

Rule 11 substitutes a new rule 13 of the 2004 Rules to remove references to the procedures in relation to three member paper panels and to require any case that is to be considered by an oral panel to be considered by such panel within 26 weeks of the case being listed.

Rule 12 amends rule 14 of the 2004 Rules to remove references to three member paper panels and to amend a reference to a “three member oral panel” to refer to an “oral panel”.

Rule 13 amends rule 20 of the 2004 Rules to increase the period of time within which the panel must notify the parties of its decision from 7 to 14 days.

Rule 14 is a transitional provision that specifies that the 2004 Rules will continue to apply to all hearings which begin before 1<sup>st</sup> April 2009.

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