

**2019 No. 1038**

**PRISONS, ENGLAND AND WALES**

**The Parole Board Rules 2019**

*Made* - - - - 20th June 2019

*Laid before Parliament* 24th June 2019

*Coming into force* - - 22nd July 2019

The Secretary of State, in exercise of the powers conferred by sections 239(5), 330(3) and (4) of the Criminal Justice Act 2003(a), makes the following Rules.

**PART 1**

**Introduction**

**Citation, commencement and revocation**

**1.**—(1) These Rules may be cited as the Parole Board Rules 2019 and come into force on 22nd July 2019.

(2) The Parole Board Rules 2016(b) and the Parole Board (Amendment) Rules 2018(c) are revoked.

**Interpretation**

**2.** In these Rules—

“1997 Act” means the Crime (Sentences) Act 1997(d);

“2003 Act” means the Criminal Justice Act 2003;

“assessment panel” means a panel appointed under rule 5(4) to consider reconsideration applications under rule 28;

“barrister” means an individual who has been called to the Bar by an Inn of Court and holds a current practising certificate;

“Board” means the Parole Board(e);

“Board chair” means the chairman of the Board appointed under paragraph 2 of Schedule 19 to the 2003 Act;

“case” means any matter referred to the Board by the Secretary of State, including a request for advice;

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(a) 2003 c. 44.

(b) S. I. 2016/1041.

(c) S. I. 2018/541.

(d) 1997 c. 43.

(e) The Parole Board is continued in existence by section 239(1) of the Criminal Justice Act 2003 (c. 44).

“custodian” means a prison officer under the Prison Act 1952(a), an officer of a contracted-out prison under the Criminal Justice Act 1991(b), or any person employed to work in a prison;

“determinate sentence” means a sentence served by a fixed-term prisoner as defined by section 237 of the 2003 Act;

“direct application” means an application made by a prisoner directly to the Board under rule 31;

“duty member” means a member of the Board appointed under rule 4(2);

“extended sentence” means an extended sentence for certain violent or sexual offences under sections 226A, 226B, 227 and 228 of the 2003 Act(c), or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000(d);

“indeterminate sentence” means a sentence listed under section 34(2) of the 1997 Act;

“members of staff” means employees appointed under paragraph 5 of Schedule 19 to the 2003 Act;

“offender” means a prisoner or a person released from prison on licence;

“oral hearing” means a hearing before a panel appointed under rule 5(2);

“panel” means a panel of one or more members appointed under rule 5(1), (2), (3) or (5);

“panel chair” means the person who is chairing a panel by virtue of rule 5(6);

“party” means a prisoner or the Secretary of State;

“previous review” means the Secretary of State’s previous referral of the prisoner’s case to the Board relating to the prisoner’s release under the 1997 Act or 2003 Act;

“prison” includes a young offender institution or any other institution where a prisoner is detained;

“prison director” means a person appointed under section 85(1)(a) of the Criminal Justice Act 1991;

“prisoner” means a person detained in a young offender institution or detained or imprisoned in any other institution, excluding a person on remand;

“prison governor” means a person acting as governor of a prison as required by section 7 of the Prison Act 1952;(e)

“provisional decision” means a decision which is not yet final because; (a) it is subject to an application for an oral hearing under rule 20(1); or (b) it is subject to reconsideration under rule 28;

“public holiday” means Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(f) in England and Wales;

“recall” means where an offender is serving a sentence in the community on licence and the Secretary of State revokes the licence returning the offender to custody;

“request for advice” means any matter referred to the Board where it is the Board’s duty to advise the Secretary of State under section 239(2) of the 2003 Act;

“solicitor” means a solicitor of the Senior Courts;

“working day” means any day which is not a Saturday, Sunday or a public holiday.

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(a) 1952 c. 52.

(b) 1991 c. 53.

(c) Sections 227 and 228 of the 2003 Act were repealed by sections 123(c) and (d) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10, subject to savings as specified in article 5 of S.I. 2012/2906.

(d) 2000 c. 6. The provisions of section 85 were repealed by paragraph 1 of Schedule 37 to the 2003 Act subject to savings specified in article 3(3) of S.I. 2012/2905.

(e) Section 7 of the 1952 Act was amended by paragraph 1 of Schedule 5(2) to the Offender Management Act 2007 c. 21 and section 18(2) of the Sex Discrimination Act 1975 c. 65.

(f) 1971 c. 80.

## **Application**

3.—(1) These Rules apply to all cases and direct applications before the Board.

(2) Subject to paragraph (3), cases referred to the Board before the date on which these Rules come into force continue under these Rules, and are treated as if the case was referred under these Rules.

(3) Applications for reconsideration under rule 28 can only be made where a decision that is eligible for reconsideration is made on or after the date these Rules come into force.

(4) Any steps taken in cases before the date on which these Rules come into force are deemed to have been taken under these Rules.

## **PART 2**

### **General powers and provisions**

#### **Delegation and appointment of functions**

4.—(1) The Board chair may delegate any of the Board chair's functions as set out in these Rules to any other member of the Board.

(2) The Board chair may appoint a member of the Board to carry out any function as required by the Rules.

(3) The Board chair may delegate the following functions to the Board's members of staff—

- (a) the appointment of panels under rule 5;
- (b) only where it is necessary to allow for a third party to comply with a deadline, and not where it would result in the adjournment or deferral of a listed hearing, the variation of—
  - (i) the timetable for proceedings under rule 6(3)(a), including deadlines set in directions;
  - (ii) the deadline for representatives to submit written representations and evidence as set in rule 18(1).

#### **Appointment of panels**

5.—(1) For all cases which have been referred to the Board, the Board chair must appoint one or more members of the Board to constitute a panel to consider, in accordance with rule 19, the release of a prisoner on the papers, or to advise the Secretary of State.

(2) If, following consideration on the papers under rule 19, a case is directed to be considered at an oral hearing, the Board chair must appoint one or more members of the Board to constitute a panel to hear that case in accordance with rules 22 to 26.

(3) If following consideration of whether a case should be decided on the papers following receipt of further evidence, in accordance with rule 21, a direction is made for the case to be decided by a panel on the papers, the Board chair must appoint one or more members of the Board to constitute a panel to make a decision on the release of the prisoner on the papers.

(4) For any application made for reconsideration of a provisional decision under rule 28, the Board chair must appoint one or more members of the Board to constitute an assessment panel to consider the application.

(5) For any application made for the Board to consider the termination of an offender's licence under rule 31, the Board chair must appoint one or more members of the Board to constitute a panel to consider the application.

(6) Any panel or assessment panel appointed under paragraphs (1) to (5) is to be chaired—

- (a) where a panel or assessment panel is constituted of more than one member, by the member of the panel appointed by the Board chair for this purpose;

(b) where a panel or assessment panel is constituted of only one member, by that member.

(7) A person appointed under paragraph (1) may, in the same case, sit on a panel at an oral hearing appointed under paragraph (2).

(8) A person appointed under paragraphs (1) to (3) to consider a case on the papers or at an oral hearing must not subsequently be appointed to an assessment panel for reconsideration of that case under paragraph (4).

### **Case management and directions**

**6.**—(1) A panel chair or duty member may be appointed in accordance with rule 4 to carry out case management functions and may at any time make, vary or revoke a direction.

(2) The panel chair or duty member appointed under paragraph (1) may make any direction necessary in the interests of justice, to effectively manage the case or for such other purpose as the panel chair or duty member considers appropriate.

(3) Such directions may in particular relate to—

- (a) the timetable for the proceedings;
- (b) the service of information or a report;
- (c) the submission of evidence;
- (d) the attendance of a witness or observer.

(4) A direction given under this rule may not relate to withholding information or reports; such directions are governed by rule 17.

(5) A party or third party who is subject to a direction may apply in writing for a direction to be given, varied or revoked.

(6) An application under paragraph (5) must—

- (a) specify any direction or variation sought and the reasons for the direction or variation, and
- (b) be served on the other party, and any third party (if applicable).

(7) Where a third party makes an application under paragraph (5), the Board must serve the application on the parties under paragraph (6)(b).

(8) Where a party, or third party, has applied for a direction to be given, varied or revoked under paragraph (5), either party or the third party (if applicable) may—

- (a) make written representations about the application;
- (b) where the panel chair or duty member thinks it necessary, make oral submissions at a directions hearing held under rule 7.

(9) The power to give, vary or revoke directions may be exercised in the absence of the parties.

(10) The Board must serve on the parties, and third party (if applicable), any directions given, varied or revoked as soon as practicable.

(11) The panel chair or duty member may adjourn or defer the proceedings to obtain further information or for such other purpose as they consider appropriate.

(12) Where the panel chair who is conducting an oral hearing adjourns or defers proceedings under paragraph (11) without a further hearing date being fixed, they must give the parties at least 3 weeks' notice of the date, time and place of the resumed hearing (unless the parties agree to shorter notice).

(13) Any decision to adjourn or defer an oral hearing must be recorded in writing with reasons, and that record must be provided to the parties not more than 14 days after the date of that decision.

(14) Where a prisoner's case has previously been referred to the Board, in making any decision under this rule to adjourn or defer proceedings, the panel chair or duty member must take into account the date of the decision of that prisoner's previous review.

## Directions hearings

7.—(1) A panel chair or duty member may hold a directions hearing.

(2) A panel chair or duty member may direct that a third party attends a directions hearing for any purpose as the panel chair or duty member considers appropriate.

(3) The panel chair or duty member must notify the parties at least 14 days before the day of the directions hearing of the date, time, place and method fixed for the directions hearing.

(4) In specifying the method fixed for the directions hearing, the panel chair or duty member may direct that the directions hearing is to take place at a specified location or via video link, telephone conference or other electronic means.

(5) At a directions hearing, unless the panel chair or duty member directs otherwise, the panel chair or duty member must sit alone.

(6) A directions hearing may proceed in the absence of a prisoner who is represented at the hearing, or an unrepresented prisoner who chooses not to attend.

## Time

8. Where the time prescribed by or under these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act is deemed to be in time if it is done on the next working day.

## Time limits

9. A panel chair or duty member may alter any of the time limits prescribed by or under these Rules where it is necessary to do so for the effective management of the case, in the interests of justice or for such other purpose as the panel chair or duty member considers appropriate.

## Representatives

10.—(1) Subject to paragraph (2), a party may appoint a representative (whether a solicitor or barrister or other representative) to represent that party in the proceedings.

(2) The following may not act as a representative—

- (a) any person who is detained or is liable to be detained under the Mental Health Act 1983(a);
- (b) any person serving a sentence of imprisonment or a sentence of a detention;
- (c) any person who is on licence having been released from a sentence of imprisonment or a sentence of detention, or
- (d) any person with a conviction for an offence which remains unspent under the Rehabilitation of Offenders Act 1974(b).

(3) If a party appoints a representative, that party or the representative must notify the Board and the other party of the name, address and occupation of the representative at the same time as the case is referred to the Board, or as soon as reasonably practicable.

(4) Where the Secretary of State receives due notification of the appointment of a representative under paragraph (3), the Secretary of State—

- (a) must provide both the prisoner and the representative with any document which is required to be provided, and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or prisoner.

(5) Subject to paragraph (2), a person whose name, address and occupation has not been notified under paragraph (3) may act as a representative if authorised by the panel chair.

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(a) 1983 c. 20.

(b) 1974 c. 53.

(6) If the prisoner has not appointed a representative, the panel chair or duty member may appoint a representative (solicitor or barrister or other representative) for the prisoner—

- (a) with the prisoner's agreement, or
- (b) where the prisoner lacks the capacity to appoint a representative and the panel chair or duty member believes that it is in the prisoner's best interests for the prisoner to be represented.

### **Method of service**

**11.**—(1) Where a party or other person is required to serve documents on the Board or parties under these Rules, the documents must be served by being—

- (a) sent to a secure electronic address where one has been provided by the Board and/or a party;
- (b) deposited to a digital repository specified by the Board, or
- (c) sent to the office of the Board and/or the party's last known address by secure post or courier.

(2) Where the Secretary of State is required to serve documents on a prisoner who is not represented, the documents must be served by handing them to the prisoner in person.

(3) The custodian who serves documents under paragraph (2) on a prisoner who is not represented must—

- (a) endorse the documents with the time and date of service on the prisoner, and
- (b) record that the prisoner has been served with the documents.

(4) Where a prisoner who is not represented refuses to receive documents under paragraph (3), the custodian must record the time and date that service was attempted.

(5) Any documents required to be provided to the Board and served on the Secretary of State by a prisoner who is not represented may also be served by handing the documents to a custodian addressed to the person to be served.

(6) Where a prisoner serves any documents under paragraph (5), the custodian must—

- (a) endorse the documents with the time and date of receipt;
- (b) record the receipt of the documents, and
- (c) forward them promptly to the addressee.

### **Date of service**

**12.**—(1) Unless the panel chair or duty member direct otherwise, any documents served under rule 11(1)(a) or (b) are deemed served on the next working day after the documents were transmitted.

(2) Any documents served under rule 11(1)(c) are deemed served on the second working day after the day on which the documents were posted or despatched.

(3) Any documents served under rule 11(2) or (5) are deemed served on the day the documents were handed over.

(4) Where a prisoner who is not represented refuses to receive documents under rule 11(3), the documents will be deemed as served on the day service was attempted.

### **Witnesses**

**13.**—(1) A party who wishes to call a witness at an oral hearing must make a written application to the Board but such an application may not be made later than 12 weeks before the date for the oral hearing notified to the parties under rule 22.

(2) A written application to call a witness must—

- (a) include the witness's name, address and occupation, and
- (b) explain why the party wishes to call the witness.

(3) A party who makes an application to call a witness under paragraph (1) must, at the same time, also serve a copy of the application on the other party.

(4) A panel chair or duty member must determine an application to call a witness and must communicate this decision to the parties.

(5) The panel chair or duty member who determines the application under paragraph (4) must give reasons in writing for any refusal to call a witness.

(6) Where a panel chair or duty member makes a direction for a witness to be called, the Board must notify the parties in writing within 14 days.

(7) Written notification from the Board that it intends to call a witness must—

- (a) include the witness's name, address and occupation, and
- (b) explain why the witness is being called.

(8) Where a witness is called under these Rules, it is the duty of—

- (a) the party calling the witness in respect of a witness called by virtue of an application under paragraph (1), and
- (b) the Board, in respect of a witness called under paragraph (6),

to notify the witness no later than 2 weeks before the date of the allocated oral hearing of the date, time, place of the hearing and the need to attend.

(9) Where a panel chair or duty member has directed that a witness is to be called, the panel chair or duty member may direct that it is suitable for a witness to attend via video link, telephone conference or other electronic means.

### **Observers**

**14.—**(1) A party who wishes to be accompanied at an oral hearing by an observer must make a written application to the Board but such an application may not be made later than 12 weeks before the date allocated for the oral hearing under rule 22.

(2) A party who makes an application to be accompanied by an observer under paragraph (1) must, at the same time, also serve a copy of the application on the other party.

(3) Within 14 days of the receipt of the application under paragraph (2), the other party may make representations to the Board on the application.

(4) After the 14-day period for the other party to make representations under paragraph (3) has expired, the panel chair or duty member must determine the application for a party to be accompanied by an observer and communicate this decision to the parties.

(5) Before granting an application made under paragraph (1), the panel chair or duty member must obtain the agreement of—

- (a) the prison governor or prison director, where the hearing is being held in a prison, or
- (b) in any other circumstance, the person who appears to the panel chair or duty member to have the authority to agree to the admittance of the proposed observer to the premises.

### **Location and privacy of oral hearings**

**15.—**(1) An oral hearing must be held via video link, telephone conference or other electronic means if the duty member or panel chair so directs.

(2) In any other circumstance, the oral hearing must be held at such a place as the duty member or panel chair, with the agreement of the Secretary of State, directs.

(3) An oral hearing (including a directions hearing) must be held in private.

(4) In addition to any witness who has been called under these Rules, and any observer whose attendance has been approved under rule 14, 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.

(5) At the oral hearing, the parties may not challenge the attendance of any witness who has been called under these Rules, or observer whose attendance has been approved under rule 14 or under paragraph (4).

## 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(a).

### **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.

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(a) 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).

(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
- (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.

## **PART 4**

### **Termination of licence**

#### **Applications to terminate IPP licences**

**31.—**(1) Where an offender qualifies to make an application to terminate their licence under section 31A of the 1997 Act(a), the offender may make a direct application to the Board or apply through the Secretary of State.

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(a) Section 31A of the 1997 Act was inserted by the 2003 Act and has been amended by section 117(10)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10, and paragraph 141 of Schedule 16 to the Armed Forces Act 2006 c. 52.

(2) Where an offender makes a direct application, the Board must serve the application on the Secretary of State and the Secretary of State must serve any reports or evidence as directed by the Board.

(3) Where an application is made through the Secretary of State, the Secretary of State must serve any reports or evidence at the same time as sending the application to the Board.

(4) Where the Board receives an application, either from the offender directly or through the Secretary of State, a panel appointed under rule 5(5) must consider the application in accordance with section 31A(4) of the 1997 Act.

(5) In considering the application under paragraphs (2) or (3), the panel may—

- (a) make a decision on the papers, or
- (b) direct that the application should be decided by a panel at a hearing.

(6) Where a panel considers the application on the papers or at a hearing, it must decide to—

- (a) terminate the offender's licence;
- (b) amend the offender's licence in accordance with section 31(3) of the 1997 Act, or
- (c) refuse the application.

(7) Where a decision is made by a panel under paragraph (6), the Board must record that decision in writing with reasons for that decision, and that record must be provided to the offender and Secretary of State within 14 days of the decision.

20th June 2019

*Robert Buckland*  
Ministry of Justice



## SCHEDULE

Rule 16

### Information and reports for a reference to the Board by the Secretary of State to determine the initial release of a prisoner or to determine the re-release of a recalled prisoner

#### Part A

##### Information relating to the prisoner

1. The full name of the prisoner.
2. The date of birth of the prisoner.
3. The prison in which the prisoner is detained, details of any other prisons in which the prisoner has been detained under the current sentence, and the date of and the reason for any transfer.
4. The date on which the prisoner was given the current sentence, details of the offence and any previous convictions.
5. If available, the comments of the trial judge when passing sentence.
6. The parole history, if any, of the prisoner, including details of any periods spent on licence during the current sentence.
7. If available, the conclusions of the Court of Appeal in respect of any appeal by the prisoner against conviction or sentence.
8. In recall cases, the details of any previous recalls of the prisoner, including the reasons for such recalls and subsequent re-release on licence.
9. In recall cases, the statement of reasons for the most recent recall, including the outcome of any criminal charges laid against the prisoner prior, or subsequent, to the point at which the prisoner was recalled.
10. In recall cases, if available, witness statements, police statements and the CPS summary of any alleged offending on licence.

#### Part B

##### Reports relating to the prisoner

1. If available and relevant to the Secretary of State's assessment of risk, the pre-trial and pre-sentence reports examined by the sentencing court on the circumstances of the offence, including any specialist reports produced at sentencing.
2. If available, any reports or evidence the sentencing court recommended be seen by those considering future risk.
3. Reports on a prisoner who was subject to a transfer direction under section 47 of the Mental Health Act 1983.
4. Current reports on prisoner's risk factors, reduction in risk and performance and behaviour in prison, including views on suitability for release on licence as well as compliance with any sentence plan.

**5.** A current risk management report prepared for the Board by an officer of the National Probation Service or relevant Community Rehabilitation Company, including information on the following where relevant —

- (a) details of the prisoner's address, family circumstances and family attitudes towards the prisoner;
- (b) alternative options if the offender cannot return home;
- (c) the opportunity for employment on release;
- (d) the local community's attitude towards the prisoner (if known);
- (e) the prisoner's attitude towards the offence for which the offender received the sentence that is being considered by the Parole Board;
- (f) the prisoners' response to previous periods of supervision;
- (g) the prisoner's behaviour during any temporary leave during the current sentence;
- (h) the prisoner's attitude to the prospect of release and the requirements and objectives of supervision, including likely compliance;
- (i) an assessment of the risk of reoffending;
- (j) a programme of supervision;
- (k) analysis of the impact of the offence on the victims, for which the offender received the sentence which is being considered by the Board;
- (l) a view on the suitability for release;
- (m) recommendations regarding any licence conditions.

**6.** If available, a current Victim Personal Statement setting out the impact the offence has had on the victim and/or the victim's family.

**7.** In recall cases, any reports considered by the Secretary of state in deciding to recall the prisoner.

**8.** In recall cases, a copy of the prisoner's licence at the point at which the Secretary of State decided to recall the prisoner.

## **EXPLANATORY NOTE**

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

These Rules set out the procedure to be adopted by the Parole Board (“the Board”) when dealing with cases referred to it by the Secretary of State and when receiving direct applications from prisoners in relation to reconsideration and termination of Imprisonment for Public Protection (IPP) and Detention for Public Protection (DPP) licences.

Part 1 revokes the Parole Board Rules 2016 (S.I. 2016/1041) and the Parole Board (Amendment) Rules 2018 (S.I. 2018/541), and contains provisions for the application and interpretation of the Rules.

Part 2 covers the powers of the Board and provisions that apply generally across the whole parole process, including the appointment of panels, the power of members to make directions, the appointment of representatives, and the power to call witnesses and allow the admittance of observers.

Rule 4 gives the Board chair the power to delegate any of the Board chair’s functions in the Rules to any other member of the Board. The Board chair may also appoint any member of the Board to carry out any function. Members of staff can be empowered by the Board chair to appoint panels and make variations to directions where it is necessary to allow a third party to comply with a deadline only where it would not result in the adjournment or deferral of a listed hearing.

Rule 5 provides for the appointment of panels for paper hearings, oral hearings, the consideration of whether to return a case to a paper hearing following the receipt of further evidence, the consideration of applications for reconsideration and the consideration of applications for the termination of an offender’s licence. The rule also sets out the members that are to chair the various panels.

Rule 6 sets out the powers of members of the Board to make, vary and revoke directions in order to manage the cases before the Board.

Rule 7 sets out the procedure to be followed for a directions hearing.

Rule 8 provides for acts to be deemed to be completed if a time limit prescribed by the Rules expires on a Saturday, Sunday or public holiday.

Rule 9 gives a panel chair or duty member the power to amend any of the time limits set out in, or made under, the Rules.

Rule 10 sets out the procedure to be followed by the parties when appointing a representative. The rule also gives the panel chair or duty member the power to appoint a representative for the prisoner with the prisoner’s agreement, or where the prisoner does not have the capacity to appoint a representative on their own behalf and it is in the prisoner’s best interests to be represented.

Rule 11 prescribes the methods of service available to the parties.

Rule 12 provides for when service will be deemed to have taken place when carried out as dictated by rule 11.

Rule 13 sets out the procedure for parties making applications to the Board for witnesses to be called at an oral hearing. Rule 13(9) allows the panel chair or duty member to direct that a witness may attend remotely i.e. by electronic means.

Rule 14 sets out the procedure for parties to apply for observers to attend oral hearings.

Rule 15 sets out the methods by which an oral hearing can take place – in person, by video link, telephone conference or other electronic means. The rule governs that oral hearings, including directions hearings, must be held in private. Only the parties and witnesses and observers who have been allowed to attend under the Rules may be present at an oral hearing. The panel chair or duty member may allow for the attendance of an observer on the day of the hearing itself.

Part 3 sets out the procedure to be followed for the entire Parole Board process from the referral of the case and service of information, through consideration by a panel on the papers, to oral hearings.

Rule 16 provides that, on the date the Board receive the referral letter and the necessary information and reports under the Schedule from the Secretary of State, the case is deemed to have been referred. The necessary information and reports must also be served on the prisoner and the prisoner's representative on the same day as service on the Board. Rule 16(3) sets out the information that must be served at the same time as referral.

Rule 17 sets out the procedure for withholding information from the prisoner or both the prisoner and the prisoner's representative where its disclosure would have an adverse effect on national security, the prevention of disorder or crime, or the health or welfare of the prisoner or any other person. Only the Secretary of State and authorised third parties may apply to the Board for material to be withheld from the prisoner or the prisoner and their representative under this Rule. This rule provides that where a direction is made for the material to be withheld from an unrepresented prisoner, that decision will automatically be considered in an appeal without the necessity of the prisoner having to apply for an appeal.

Rule 18 provides the procedure for the parties making representations to the Board and for serving any additional evidence for an oral hearing.

Rule 19 gives the panel the power to make a decision on the papers in respect of the release of offenders (including prisoners serving indeterminate sentences). Under this rule, the Board can also direct that a case should be considered at an oral hearing. A decision that a prisoner is suitable for release under rule 19(1)(a) is provisional if it is eligible for reconsideration under rule 28. If the decision is not eligible for reconsideration it is final. A decision that a prisoner is not suitable for release under rule 19(1)(b) is provisional to allow the prisoner to apply for the case to be determined at an oral hearing under rule 20.

Rule 20 allows, and sets out the procedure, for a prisoner who has been found on the papers to be unsuitable for release to apply for the case to be determined at an oral hearing. This rule provides that where a prisoner does not apply for the case to be determined at an oral hearing or an application is made but the panel chair or duty member decide that the case should not be determined at an oral hearing, the decision made under rule 19 remains provisional if it is eligible for reconsideration under rule 28, otherwise it is final.

Rule 21 provides that, where the panel have made a direction for a case to be considered at an oral hearing, a panel chair or duty member can direct that the case should be decided by a panel on the papers if further information has been supplied to the Board which makes an oral hearing unnecessary. A case cannot be directed back to be decided on the papers where there is less than three weeks until the date listed for oral hearing. Where a direction is made for a case to be decided on the papers under this rule, the decision that is made by the panel chair or by the panel appointed under rule 5(3) remains provisional if it is eligible for reconsideration. If it is not eligible for reconsideration, it is final.

Rules 22 to 24 set out the procedure for a case to be considered at an oral hearing.

Rule 25 provides for the panel to make a decision on release following an oral hearing. A decision made under rule 25 remains provisional if it is eligible for reconsideration, otherwise it is final.

Rule 26 sets out that a decision of an oral panel is the decision of the majority of the panel. Any panel that is unable to reach a decision must be dissolved by the Board chair and a new panel appointed.

Rule 27 provides that the Board must produce a summary of the reasons for certain decisions made under rules 19, 21, 25 and 31, for a victim or any other person who makes an application to receive one, unless there are exceptional circumstances for why a summary should not be produced for disclosure. Where a decision is made under rule 19(1)(b) that a prisoner is not suitable for release, a victim or other person will be able to apply for a summary of the reasons for

that decision only if the case is not directed to be considered at an oral hearing (either because the prisoner did not apply for it to be considered at an oral hearing or the application was refused).

Any information about proceedings before the Board must not be disclosed except as directed by the Board chair. The names of other persons concerned in Board proceedings must never be disclosed. A contravention of the rules against disclosure are actionable as a breach of statutory duty.

Rule 28 sets out the power for the Board to consider applications from a party for a case to be reconsidered where a decision has been made by a panel on the papers or following an oral hearing. The power to reconsider a case applies to indeterminate sentences, all extended sentences and determinate sentences where initial release is not automatic and is instead decided by the Board. A party may apply for a case to be reconsidered on the grounds that the decision was irrational or procedurally unfair. An assessment panel will consider an application and decide whether that case meets the grounds for reconsideration or whether the application should be dismissed. If the panel directs that the case should be reconsidered, the panel must direct the case back to a panel to decide the case again on the papers or at an oral hearing.

Rule 29 provides for the procedure where an error of procedure is made by a party or the Board.

Rule 30 allows for the correction of any slip or omission in a decision.

Part 4 governs the procedure for considering applications made by offenders serving Imprisonment or Detention for Public Protection (“IPP/DPP”) sentences for their licence to be terminated under section 31A of the Crime (Sentences) Act 1997 (“the 1997 Act”). Section 31A of the 1997 Act allows for offenders serving IPP or DPP sentences who have been released on licence to apply to the Board for their licence to be terminated if a period of ten years has passed, beginning with the date of release. Section 31A of the 1997 Act sets out that the Board shall direct that the Secretary of State make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force. If the Board is not satisfied of this, it must dismiss the application,

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from [www.legislation.gov.uk](http://www.legislation.gov.uk).

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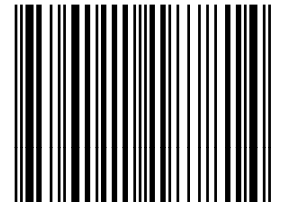


£6.90

UK201906211006 06/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/1038>

ISBN 978-0-11-118781-4



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