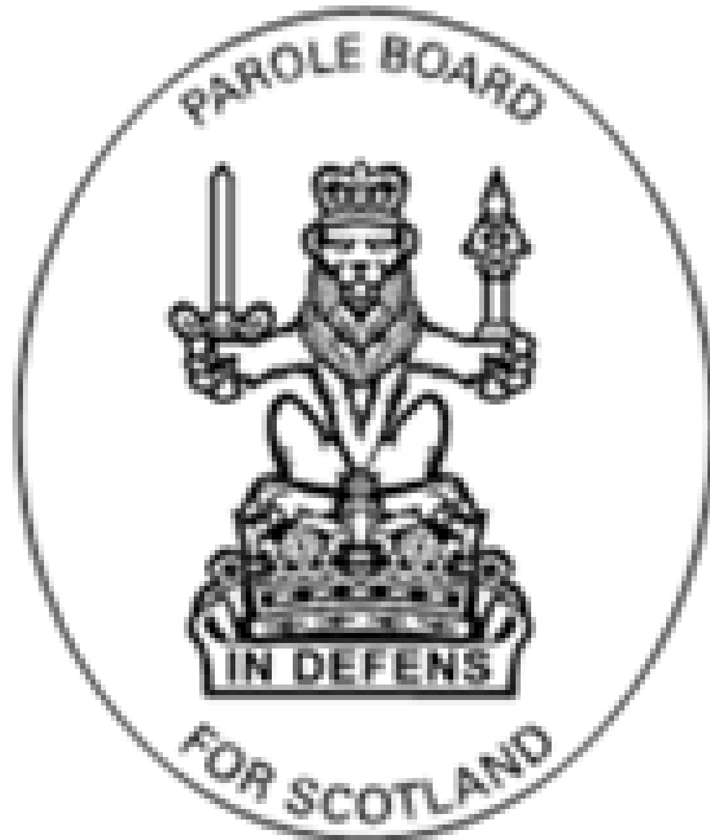
PAROLE BOARD FOR SCOTLAND



GUIDANCE FOR MEMBERS

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Date of this Version 12 July 2022.

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Section 1 Introduction

Date of last review	14 December 2020
Next scheduled review	14 December 2022

1.1 Purposes of the Guidance

1.1.1 The Parole Board for Scotland Guidance for Members provides the Board and Parole Scotland with a flexible, compact and up to date source of reference material on procedure and practice. New Board members will find core information and links to other sources of information which will support their induction into the role.

1.2 Sources of material

1.2.1 The contents of the Guidance draw upon the accumulated experience and development of the Parole Board for Scotland over many years. The emphasis is on the Board's most recent development and its current operation under the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) as well as relevant case law. The 1993 Act can be found here. The incorporation of the ECHR into Scots' Law added a further dimension and source of material.

1.2.2 The Management of Offenders (Scotland) Act 2019 received Royal Assent on 30 July 2019. The provisions that directly affect the Board are incorporated into the Guidance.

1.2.3 The Guidance has been compiled for the benefit of individual Board members and to assist the Board with understanding individual and corporate roles and responsibilities. Sections are arranged as self-standing items of guidance rather than as a complete manual. Arrangements are in place to update as required when legislation or practice changes, and for a scheduled review every two years.

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Section 2 Origins & objectives of parole

Date of last review	14 December 2020
Next scheduled review	14 December 2022

2.1 The introduction of a parole system

2.1.1 A formally structured parole scheme was first advocated in 1964 with the publication of "Crime - a challenge to us all" (Lord Longford). A summary can be found here. This was followed in 1965 by a White Paper "The Adult Offender" and resulted in legislation. This new executive form of release from the sentence imposed by the courts was based on the concept of rehabilitation and the view that prisoners are more likely to become law abiding citizens if they are released into the community on supervision before completing the whole of their sentence. The parole system introduced in 1968 was influenced by parole systems in other countries, particularly the USA. There were also some influences existing within the British penal system related to executive early release from some categories of sentence e.g. Borstal Training, the release on life licence of life sentence prisoners, and the practice of granting remission. These practices had amounted to a modification of the sentence imposed by the courts, a matter that previously could only be interfered with through the Royal Prerogative of Mercy.

2.2 Subsequent reform and development

2.2.1 A review of the Scottish system was carried out by a committee under the chairmanship of Lord Kincraig and a report "Parole and Related Issues in Scotland" was published in 1989. The Prisoners and Criminal Proceedings (Scotland) Act 1993 implemented the Government's conclusions after consideration of the Kincraig Report. The effective date of implementation was 1 October 1993. The Carlisle Committee (1988) carried out a similar review of the parole system in England and Wales. The reformed system that emerged there was accompanied by the explicit expectation of an increased parole rate. Risk factors would be balanced by the narrower "parole window", better facilities for preparing prisoners for release, and increased resources for supervision and monitoring after release.

2.3. The current approach

2.3.1 The Parole Board for Scotland exists under the provisions of the Prisons (Scotland) Act 1989, the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended) (the 1993 Act), and the Convention Rights (Compliance) (Scotland) Act 2001. The Board, which has been in existence for more than 50 years, is an independent, judicial body and a Court for the purposes of Article 5(4) of the European Convention on Human Rights. It is independent of Scottish Government and impartial in its duties. Its main aim is to ensure that those prisoners who are no longer regarded as presenting an unacceptable risk to public safety may serve the remainder of their sentence in the community under the supervision of a social worker. It is not the responsibility of the Board to consider the questions of punishment and general deterrence. The issues of punishment and deterrence are matters for the sentencing court. The Parole Board has a number of statutory functions, largely set out under the 1993 Act and the Management of Offenders etc. (Scotland) Act 2005. The Board only grants release in cases where the level and nature of risk is deemed to be manageable; this decision is informed by the evaluation of risk.

2.3.2 The Scottish Prison Service manages long-term and indeterminate sentence prisoners in a way that offers them the potential to maximise opportunities to progress and work towards reducing risk up to the point of release. This is achieved through risk and needs assessment, integrated case management, access to formal education and vocational training, facilities to learn new employment skills, the provision of social work services, and assessment for, and access to, a range of accredited offending behaviour programmes. The Risk Management Authority (RMA) provides guidance and oversight of the risk management plans of those individuals who are subject to an Order for Lifelong Restriction (OLR). Risk is also managed and assessed via graduated access to the community on temporary release licence when a prisoner is located in the National Top End or the Open Estate. Prisoners also have access to related individual counselling where appropriate. Psychiatric, psychological and addictions expertise is also available to support these objectives.

2.3.3 The National Outcomes and Standards for Social Work Services in the Criminal Justice System require Social Work Departments to provide services in respect of prisoners, while in custody or while in the community following release on licence. The services after release must include supervision and monitoring, and may include facilitating access to employment advice and training resources, and continuing, where necessary, appropriate offending behaviour work or counselling undertaken in custody.

2.3.4 These services are all valuable in the context of risk assessment and of successful reintegration and rehabilitation on release. For example, it is likely that access to employment will reduce risk by allowing the offender to be economically independent in a social and family context and be a part of the local community. In so far as these matters may operate to reduce risk they are important factors for the Board to consider when making decisions within the range of options currently available in the parole system.

2.4 A vision of parole

2.4.1 Parole offers significant benefits to the criminal justice system. It enables people to be released from prison when it is considered that the risk they pose can be safely managed in the community and they are assessed as unlikely to commit further offences or cause harm to another person. Under proper supervision and subject to recall if anything goes wrong while in the community, the released person can continue to address issues which have led to offending in the past. Public safety is the Board's main concern and the best way to maximise this is for prisoners to be returned to the community in a managed way. The parole system can provide an incentive to people in prison to address their risk factors and to plan their return to the community. Early release can assist effective re-settlement by continuing offence-focused work in the community and by accessing the available support networks to support an offence-free lifestyle.

Section 3 The Parole Board for Scotland

Date of last review	28 February 2019
Next scheduled review	28 February 2021

3.1 Duties and responsibilities

3.1.1 The Board is a Tribunal Non-Departmental Public Body that operates independently from the Scottish Ministers. Members, as holders of public office, are governed by The Nine Principles of Public Life in Scotland**:**

- duty
- selflessness
- integrity
- objectivity
- accountability & stewardship
- openness
- honesty
- leadership
- respect

3.2 Accountability

3.2.1 Decisions and recommendations made by the Board must be supported by reasons and may be the subject of judicial review. The Board is required by law to submit an Annual Report to Scottish Ministers who present it to the Scottish Parliament. The Board's Corporate Plan assists with the ongoing management and development of the Board in relation to the Board's values, objectives, workload and meeting key performance targets. From time to time the Board is subject to policy and financial management review. The Board may commission research into how it functions with a view to enhancing procedure and practice. The corporate governance of the Board is supported by a Memorandum of Understanding between the Chairperson of the Board and Scottish Ministers. This Memorandum of Understanding provides for a Parole Board Management Group to support the

Chairperson in corporate management of the Board. Further details can be found here.

3.2.2 The Board's Corporate Plan, Annual Report, Memorandum of Understanding and standing orders for PBMG are published on the Board's website

3.3. Membership

3.3.1 The composition of the Board is governed by Schedule 2 of the 1993 Act. Members are appointed through a process of application and selection. As a result of the influence of the ECHR, the tenure of appointment is a period not shorter than six years nor longer than seven years. An application for reappointment may only be made if three years or more has elapsed since ceasing to be a member. A member may resign at any time and an appointment cannot extend beyond the age of 75 years. Removal from office can be for unfitness due to inability, neglect of duty or misbehaviour. A Tribunal would be convened to consider removal of a member (further details can be found in Schedule 2 to the 1993 Act).

3.4 Induction, training & development

3.4.1 New members receive structured support during the initial stages of appointment. An initial mandatory training event provides an introduction to parole, the relevant legislation and an explanation of how the Board discharges its functions. Detail will be provided on the tribunal and casework procedures and the supporting paperwork including dossiers and decision minutes.

3.4.2 Following the training event, new members will observe one casework meeting and one tribunal where they will not be involved in decision making. Those members participating in casework meetings will be allocated a smaller number of cases in their first full meeting before moving on to a full allocation at subsequent meetings. New members will receive training in Victim Interviews prior to meeting victims and families.

3.4.3 All members receive training and development in relation to issues having an impact on the work of the Board. Members are expected to be available for regular training throughout the year for which advance notice will be provided.

3.4.4 Members are required to complete some mandatory on line training in relation to Data protection and IT security.

3.4.5 The work of the PBS and its members is subject to regular assessment. Members participate in a formal review system as part of their ongoing appointment.

3.5. Parole Scotland

3.5.1 Parole Scotland is, amongst other things, responsible for managing (1) referrals from the SPS Parole Unit and (2) the Board's workload. Members of Parole Scotland staff have responsibility for allocating work to members, and managing case meetings and Tribunal work. The Chief Executive of Parole Scotland has responsibility to the Chairperson for these matters.

Section 4 General Principles

Date of last review	
Next scheduled review	

4.1 This section is currently being drafted

Section 5 Dossiers and their consideration

Date of last review	18 March 2022
Next scheduled review	18 March 2024

5.1 Role of the Scottish Ministers

5.1.1 Scottish Ministers prepare dossiers in the cases of prisoners or patients becoming eligible for consideration of: release on licence, licence conditions where statutory release is upcoming, breaches of release licence, amendment to licence conditions and a range of other relevant considerations. The dossier will contain information they consider relevant including the material covered by the Schedule to the Parole Board (Scotland) Rules 2001 (the Rules). The remainder of this section will refer to the prisoner from time-to-time. These references should also be considered as applying equally to patients at the State Hospital or other secure facility. Once the dossier has been prepared it is referred to the Board and to the prisoner. The prisoner is given four weeks from the date of issue of the dossier to submit representations. The referral papers sent to the Board will provide any additional background to the particular case and specify what the Board is being asked to decide and/or recommend.

5.1.2 It is worth noting that determinate cases are usually referred in advance of the Parole Qualifying Date (PQD). As well as allowing the Board to consider suitability for release, this also lets SPS consider whether to allow prisoners release on Home Detention Curfew (HDC) prior to release at PQD.

5.2 The dossier - a general outline

5.2.1 At initial referral the dossier should contain a note of the prisoner's full name and date of birth, location and current sentence(s). There will also be a note of any previous convictions and a report from the trial judge in any case where at a single court hearing a long-term or extended sentence was set. On occasion prisoners have accumulated a number of short sentences which add up to a long-term sentence; in such cases a trial judge report will not normally be available. In the case of older life

sentence cases, where the index conviction predates the completion of trial judge reports, the dossier may contain a Note of Circumstances outlining the facts of the case. The dossier will normally also contain any reports, whether from social work, psychiatrists or others, completed at the time of the index offence to inform the sentencing decision.

5.2.2 The dossier also contains a report from the prisoner's personal officer, countersigned by the hall manager, which covers conduct in custody, including any misconduct and any offending behaviour programmes completed. It also contains two separate social work reports, one from the prison based social work team and one from the community based supervising officer. It will also contain a healthcare report from NHS Scotland (NHS Scotland is responsible for health care in prisons in Scotland). There may be a report indicating whether there is any negative intelligence on the prisoner and, if there is, an outline of that intelligence and of its assessed reliability. The dossier will also include representations or other information submitted by the prisoner or by a solicitor on his or her behalf. The dossier may contain representations from a victim or victims.

5.2.3 The dossier will also include records of the Board's previous consideration of the case in the form of minutes or letters summarising the evidence considered and the conclusion reached. The dossier may also contain a variety of other reports and information. The most notable examples are psychiatric reports, psychological reports and reports from specialist counsellors.

5.3 Dossiers in tribunal cases

5.3.1 Dossiers for tribunal cases may additionally contain a report by the Lifer Liaison officer (LLO) or Early Release Liaison Officer (ERLO) updating the Board on the prisoner's conduct and engagement with prison activities such as work and education. The report will also detail the prisoner's progress in any offending behaviour work, identifying any further work considered necessary and indicating the proposed management plan for the prisoner in the event that release is not directed. It will not express any views on the advisability of release.

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5.3.2 If the prisoner is subject to an Order for Lifelong Restriction, the dossier will contain a Risk Management Plan approved by the Risk Management Authority (RMA). It will also include the Annual Implementation Report which the Lead Authority (in this case SPS) is required to submit to the RMA on its delivery of the plan. It should be noted that section 26B of the Prisoners and Criminal Proceedings (Scotland) Act 1993 specifically requires the Board to, whenever it is considering the case of a person in respect of whom there is a risk management plan, have regard to the plan. If there is such a plan, it would not be competent to proceed without sight of it.

5.4 Children and young person's cases

5.4.1 In the case of children and young persons sentenced to a determinate period of detention, the dossier will contain a variety of reports covering the core issues described above but with a stronger emphasis relative to the child's particular circumstances. For example, there will be a greater emphasis on the child's response to education during detention. Although indeterminate sentences are applied to children and young persons, it is unlikely that the relevant punishment part will have been completed while they were still considered to be a child or young person.

5.5 Patients in hospital

5.5.1 In the case of prisoners who are detained patients under mental health legislation the dossier may contain a mixture of prison and hospital reports. The weight and emphasis of the latter reports may have a direct bearing to the length of the detention in hospital by the time of referral. There will usually be a report from the Responsible Medical Officer (RMO), details of any transfer for treatment direction as well as reports from the hospital social worker and the mental health officer. Very often, the medical reports in such cases will be formulated to address the criteria for a Compulsory Treatment Order rather than the Board's tests for release, and the tribunal or panel will have to be mindful of this and apply the correct test.

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5.6 Grounds for recall & consideration of re-release

5.6.1 In grounds for recall referrals the dossier will normally comprise the documents outlined at para 5.2.1 above, a copy of the licence conditions and the Throughcare Licence Breach Report (TLBR). The dossier will also include records of the Board's previous considerations of the case together with the reports provided for the last consideration. The TLBR will usually relate to concerns about the licensee's conduct and response to supervision while on licence and details of any new criminal conduct, alleged or otherwise.

5.6.2 After recall and before consideration of re-release the prisoner is entitled to submit representations against recall. If provided, such representations will be included in the re-release dossier. The re-release dossier will include the minute of the meeting which recommended recall, as well as the basic information available to the members who recommended recall. It may also include information from the prisoner's solicitor on the status of any outstanding charges and a report from the prison now holding the individual concerned. In tribunal cases for re-release consideration, the dossier will contain the full suite of reports expected in Part IV cases.

5.7 Deferral or adjournment

5.7.1 Where the Board or a tribunal is unable to reach a decision on the level of risk or for other reasons, it may defer or adjourn for further information. Therefore, it is open to the re-convened Board or tribunal to revisit the issue of risk, especially in light of the new information that has come to hand.

5.7.2 The Board's duty is to form a judgement on the reports in the dossier and any other information obtained, consider the evidence and decide on the acceptability of risk for release or otherwise. The Board is not bound by any of the individual risk assessments before it but the reasons for its own assessment of risk should be clearly set out in the reasons given for its decision.

5.8 Matters taken into account

5.8.1 The Rules specify the matters that may be taken into account. In practical terms the Board may take into account any matter which it considers to be relevant. Specifically this includes the nature and circumstances of the index offence(s) and any other offences of which the person has been convicted, the person's conduct in custody, the risk of re-offending or causing harm (harm is not defined) if released on licence, the person's intentions if released on licence and their likelihood of fulfilling those intentions.

5.9 Damaging information

5.9.1 The Rules provide for circumstances where information in the dossier may not be disclosed to the prisoner on one or more of the specified grounds that it would be considered "damaging" to do so. This information can take any form but is usually in the form of a non-disclosure intelligence report. The grounds are that the information would be likely to adversely affect the health or welfare of any person; result in the commission of an offence; facilitate an escape or other act prejudicial to legal custody; impede the prevention or detection of offences or the apprehension or prosecution of offenders; or, damage the public interest. The Board may take into account any damaging information not disclosed to the prisoner.

5.9.2 The Board has produced additional guidance at section 32 specifically covering its approach to damaging information withheld from the prisoner.

5.10 Role of the Board after referral

5.10.1 After referral of the dossier the Board is required to deal with any further procedural matters such as allocating the case to a casework meeting or arranging a tribunal. The Board will often receive representations or other information from the prisoner.

5.10.2 The Board should not defer nor should a tribunal adjourn consideration of a case unless it is clear that a decision cannot properly be made without potentially prejudicing the interests of fairness and justice in respect of the prisoner and/or public safety. The Board or tribunal should be mindful of the requirement for procedural fairness, and should not normally decide to adjourn a tribunal or oral hearing without taking the views of the prisoner or his solicitor on such an adjournment.

5.10.3 The decision whether to defer or adjourn a case for additional information or reach a negative decision on the referred information may sometimes be quite difficult. Decisions to defer or adjourn should not be made lightly but must always be made with fairness in mind.

5.10.4 A decision to defer or adjourn for further information should not be made to obtain information that will only become available at some unspecified point in the future. On occasion, however, reports before the Board are unclear or lack key information required (for example, on the detail of the management plan on release). In such cases it may be appropriate to defer to secure more robust information.

5.10.5 A reasonable ground for deferring is that the time for receipt of representations has not elapsed when the case comes before the Board for consideration. Another ground for deferring or adjourning is that there is additional relevant information in the form of existing reports or documents that are readily available to the Board and which should have been made available to the Board or tribunal. In most cases this is likely to be closely linked with release plans or to the imminent reported outcome of offending behaviour work or counselling or to await a psychological risk assessment.

5.10.6 Where consideration is being given to seeking new information, account should be taken of all factors. This includes the general requirement for the prisoner to see the information and submit representations and the need to ensure prisoners are not unnecessarily detained in custody.

5.10.7 The context of statutory offences mentioned in the dossier, including previous convictions, may not always be immediately obvious. The website legislation.gov.uk

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can provide the detail of relevant statutory offences through a relatively straightforward search. In the event of doubt, legally qualified members may be able to assist.

5.11 Duty to make enquiries where there are gaps in information

5.11.1 The Board (and an individual tribunal and panel) makes a decision in relation to public protection, on the basis of assessment of risk. Part of the Board's role is to identify where information may be missing, or incomplete. This is vital where the missing or incomplete information may be material to the assessment of risk.

5.11.2 In such cases, it is not appropriate to proceed in the absence of this information. Instead, the Board should consider what enquiries are necessary to obtain the relevant information, and direct that these are made. The Board should specify the information that is required, and who should obtain this information. The Board may wish to make enquiries with bodies such as Scottish Prison Service, Crown Office or the NHS. The Board may require to use its powers in terms of the Parole Board (Scotland) Rules 2001 under Rules 15D and 15E (in relation to oral hearings) and Rule 24 (in relation to tribunals) to cite witnesses to provide evidence, and compel the production of documentation. It may be necessary to postpone or adjourn a tribunal or oral hearing until this information is available.

5.11.3 In the case of *Worboys (reported as The Queen on the application of DSD and NBV & Ors -v- The Parole Board of England and Wales & Ors and John Radford),* the Court upheld the challenge to the decision of the Parole Board of England and Wales on the grounds that the tribunal had not sought further information about offences which had not resulted in a conviction. The Court said that "*In short, there is no implied limitation on the nature or temporal character of the information the Parole Board may take into account in assessing risk: the only constraint is that the board must act fairly"*

5.11.4 This necessarily involves a judgement as to the significance and weight to be attached to information, and the importance of recovering it. However, the Board must give priority to its role in safeguarding the public.

Section 6 Framework for decision-making

Date of last review	18 March 2022
Next scheduled review	18 September 2022

6.1 Public safety

6.1.1 In assessing the suitability of prisoners for early release on parole or release on a life licence the Board focuses primarily on the risk to the public of a further offence being committed at a time when the prisoner would otherwise be in prison. Closely associated with the risk of re-offending is the potential for risk of harm or serious harm. No direction or recommendation for release should be made if there is an assessed unacceptable risk to the public of a further offence being committed at a time when the prisoner would otherwise be in prison. However, the Board may also balance this risk against the benefit, both to the public and the prisoner, of supervision in the community and the likelihood of this assisting reintegration and rehabilitation and reducing the risk of re-offending. The Board must always be aware that safeguarding the public should outweigh any benefits of release to the prisoner.

6.2 Risk assessment

6.2.1 In making a judgement on a case the Board is making a risk assessment based on all of the information in the dossier including formal and structured risk assessments reported in the dossier that have been based on established and accepted procedures. Social work reports and psychological reports in the dossier should describe in broad terms the risk assessment tools that have been applied in reaching a view on risk. The most common risk assessment tool is the “Level of Service Case Management Inventory” (LSCMI). This measures the risk and need factors of late adolescent and adult offenders. It considers stable and dynamic factors (see section on risk factors below) and combines risk assessment and case management into one evidence-based system. When assessing the risk posed by sex offenders, practitioners mostly use the Risk Matrix 2000 (RM2000) as a screening tool and Stable and Acute 2007 (SA07) to track changes in the risk presented over time. The Board or a tribunal is not obliged to follow the recommendations drawn from

formal risk assessment tools or other evidence but where there is a clear divergence it is necessary to clearly indicate why the Board takes a different view.

6.2.2 Risk assessment is a varied and dynamic process that is continually being evaluated, refined and developed to maximise its reliability in identifying, assessing and managing risk effectively. Actuarial methods utilise statistical techniques to generate reliable risk predictors. The downside of this approach can be "statistical fallacy" and the low incidence of risky behaviours in the population as a whole. Although the clinical method is considered less reliable, it can provide important information on an individual's risky behaviours and environmental stressors as well as in establishing risk management plans. The current approach is leaning towards the significant role that structured clinical judgement, particularly in the form of structured behavioural rating scales, can have as part of actuarially based tools. The combined use of clinical and actuarial methods in a holistic approach is now advocated as the technique most likely to enhance the predictive accuracy and usefulness of risk assessments e.g. MacLean Committee Report on Serious Violent and Sexual Offenders (2000). One of the outcomes of that report was the introduction of legislation that gave judges the power to impose an Order for Lifelong Restriction (OLR), broadly similar to a discretionary life sentence.

6.2.3 Further information on risk management tools can be found in the Risk Management Authority's Risk Assessment Tools Evaluation Directory (RATED) which is available through the portal.

6.3 Risk factors

6.3.1 Static risk is the risk prisoners represent on the basis of factors they cannot change i.e. their history and particularly any criminal history. Dynamic risk relates to variables that can, or could, change over time and include anger, impulsiveness, use of alcohol and/or drugs, literacy and age. Risk assessment has to have regard to both factors and is anchored in static factors. Dynamic factors are then identified and their significance assessed in reaching a balanced judgement of each prisoner's circumstances.

6.3.2 Research is continuous in the field of criminal justice and the following information is given by way of example only and should not be regarded as exhaustive. More importantly it should not be considered as directive in any sense since the outcome of research is a generalised position and each case considered by the Board will be susceptible to the introduction of dynamic variables by the time release is being considered.

I) There may be a strong link between being the subject of physical, sexual or psychological abuse during childhood and general criminality.

II) Criminal behaviour and convictions in males under the age of 21 years are associated with an increased risk of re-offending.

III) Employment is associated with decreased risk of re-offending.

IV) Breach of community based disposals, bail or other court orders could indicate that a person is more likely to re-offend, or less likely to comply with licence conditions.

V) Where there is a history of violence this could indicate that a person is more likely to engage in future violence.

VI) Current mental health symptoms (as confirmed by an up to date psychiatric report) can be associated with an increase in the risk of offending. However, the psychiatric report should have given a view on the impact that the symptoms may have in relation to the prisoner's release into the community and how any prescribed medication may impact on the symptoms. The Board should not make a licence condition requiring an offender to take medication prescribed for a mental disorder, as it lacks the statutory framework and expertise to do so. However, the Board may wish to consider if there are mechanisms which can ensure that an offender takes medication if it will have an impact on risk, such as a Compulsory Treatment Order (granted by the Mental Health Tribunal for Scotland).

VII) A pattern of recent escalation in frequency or severity of violence may be associated with imminent risk of violent recidivism.

VIII)Some offenders routinely engage in minimisation and/or denial of anti-social behaviour.

6.4 Denial of guilt

6.4.1 The Board must approach each case on the basis that the prisoner was properly convicted of the offence(s) for which he or she was sentenced. It is not the function of the Board to investigate possible miscarriages of justice or to raise any misgivings about the correctness of a conviction. An important factor is that denial of guilt may operate as a barrier to participating in offending behaviour programmes or counselling while in custody or in the community after release. Denial of guilt need not be a barrier to participation in sex offender programmes. The matter of denial of guilt has been discussed in two Court of Session Cases – McBrearty (in which a full opinion was not issued) and then Laidlaw (2007). In the latter case the court observed that the Board members will, in assessing risk, be presumed to have considered *all* relevant factors before coming to their decision, and balance positive and negative factors. If it is clear that has been done, then the court will be slow to interfere with the Board's discretion.

6.5 Offending behaviour programmes

6.5.1 The SPS has a wide range of accredited offending behaviour programmes at its disposal and prisoners are assessed according to their criminal history and behaviour and the current conviction(s). The outcome of assessment for participation in these programmes, as well as a post-programme report, is frequently reported in dossiers. Ideally the post-programme report will contain information on the topics covered, any progress made and any remaining unmet need. Attendance at an offending behaviour programme should not be considered an end in itself. Board members should look for evidence of behaviour change or insight into triggers to offending. It is also helpful if information is provided in the custody report on any

changes in behaviour noted following participation in an offending behaviour programme.

6.6 Experience and skills of Board members

6.6.1 Members are encouraged to seek assistance from other Board members, especially those with relevant professional expertise, whenever necessary and this is a proper use of the Board's resources. However, care is needed to confine discussion to only obtaining the required information or interpretation and ensure that discussion does not include the merits of the case. Where a casework meeting is fixing an oral hearing, or a case is to be deferred or adjourned, it may be appropriate to make a recommendation that a member with a particular skillset (e.g. mental health) sits on the rescheduled panel/tribunal.

6.7 Previous convictions

6.7.1 Where a prisoner has criminal convictions a copy is usually included in the dossier or reported in the Note of Circumstances. Social work reports may provide a summary of the actual circumstances of the most relevant convictions and their association, if any, with addictive behaviours. By and large the information provided is a sufficient basis for understanding a person's criminal history. The following information is provided to enhance the understanding of Board members. Information in the dossier in relation to convictions, or the lack of them, may not always be what it seems.

6.7.2 Because of historical factors a variety of styles of criminal record may appear in dossiers. These vary from lists printed from the SCRO computer to those "typed" in the Procurator Fiscal's office at the time a case is reported by the police for the Fiscal's consideration and where a degree of selection could have been applied. However, the latter style is less frequent nowadays. It must also be remembered that a conviction list provided with the police report may have become out of date due to subsequent convictions for other offences outstanding at that time. This can occasionally become apparent where the prison requisitions a convictions list via

Scottish Criminal Records Online (SCRO) at the time of instigating preparation of the dossier.

6.7.3 A Police National Computer (PNC) record may also be contained in the dossier. This will include Scottish convictions and may also include convictions elsewhere in the UK. There is a degree of exchange of criminal record information between systems but it is doubtful if there is absolute accuracy.

6.7.4 The SCRO database, the most usual source of conviction information in the dossier, is subject to weeding policies related to the age of the prisoner, the seriousness of the conviction and the time that a conviction has been on the record. In minor convictions the criteria are 40 years of age and the conviction is 20 years old. In serious convictions (includes serious violence and sexual offending) the criteria are 70 years of age and the conviction is 30 years old (the same criteria were applied at the time of converting manual records to computer database prior to going live in 1988). Some records will also, at the beginning of the record, contain details of “pending cases” which indicate that charges may still be live in the Procurator Fiscal’s office. It is important to look out for these as the text in dossiers can sometimes be incomplete or confused about pending cases.

6.7.5 Only the most serious disposals from the Children's Hearing are retained beyond 18 years of age.

6.7.6 Not all road traffic convictions are recorded - only the most serious and where there is a broadly similar "common law" equivalent e.g. taking a motor vehicle without consent (theft), driving while disqualified (contempt of court) and causing death by dangerous driving (culpable homicide). However, all road traffic offences committed in association with another recordable common law crime or statutory offence will be recorded. This means that a record in the dossier may not include driving offences associated with consumption of alcohol and/or drugs. The most common statutory offences have been listed earlier. Most common law offences are self-explanatory, although there may occasionally be more obscure offences such as “hamesucken” (entering a person’s home to assault them) on schedules of previous convictions.

6.8 Prisoner Supervision System & progression pathway

6.8.1 A Prisoner Supervision System (PSS) was introduced in 2002. This system reflects the amount of supervision a prisoner requires within prison. It is designed to assist with the effective management of prisoners in the context of public safety, the operational needs of the SPS, facilitation of progression, fairness and transparency, and the appropriate allocation of resources.

6.8.2 Prisoners are assigned one of three supervision levels:

- High = an individual for whom all activities and movements require to be authorised, supervised, and monitored by prison staff.
- Medium = an individual for whom activities and movements are subject to locally specified limited supervision and restrictions.
- Low = an individual for whom activities and movements, specified locally, are subject to minimum supervision and restrictions (and could include licence conditions and unsupervised activities in the community).

6.8.3 There is a set of ten assessment criteria applied on admission and subsequently. The process is geared towards eliminating the need for higher supervision levels than are required. Prisoners are provided with reasons for the allocation of any particular supervision level.

6.8.4 The progression pathway for long-term prisoners defines the minimum period to be served in a secure establishment before having supervised or unsupervised access to the community. Determinate sentence prisoners (including those with extended sentences) become eligible for transfer to open conditions when they are within two years of their Parole Qualifying Date (PQD). Life sentence prisoners must have no more than four years to serve before the expiry of the punishment part to become eligible for transfer to national top ends and thereafter to open conditions. Order for Lifelong Restriction (OLR) prisoners must have no more than two years to serve before the expiry of the punishment part to become eligible for transfer to national top ends and thereafter to open conditions. OLR prisoners can be considered for transfer directly to open conditions. Further details about the progression pathway

can be found in the document Risk Management, Progression and Temporary Release Guidance which is available through the Portal under SPS information.

6.8.5 The process for assessing a prisoner's required level of supervision dovetails with the Risk Management Team, the Programme Case Management Board (PCMB) and the Integrated Case Management (ICM) process. This provides a cohesive system for assessing risk, managing prisoners through their sentence and addressing identified needs. One outcome is that in closed establishments there will be a high proportion of prisoners allocated a low supervision level.

6.8.6 Board members must remember that this system is a prison management tool and a prisoner's conduct in custody is only one of many factors that may be taken into account in making a judgement on the acceptability or otherwise of release on licence. For example, early release on parole or release on life licence is not an automatic consequence where a prisoner allocated a low supervision level has access to the community through home leaves and/or a work placement following transfer to open conditions (the least restrictive prison regime).

6.8.7 The relationship between security category reviews and Tribunal Hearings has been reviewed in England - *Williams (2002)* and may usefully be considered in the context of the PSS in Scotland. The relevant part of the judgement states that "[Both] address the same broad issue - public safety - but are resolving a different problem. There is no statutory or other basis for concluding that one decision making body has priority over the other or that the judgement of one is binding on the other. Indeed … it is an inevitable consequence of the two distinct processes, addressing linked but different questions that apparent inconsistencies of decision may occasionally happen". The issue of public safety considered by the prison authorities is the risk to the public posed by an escape.

Section 7 Indeterminate sentence prisoners (life & Order for Lifelong Restriction)

Date of last review	15 March 2021
Next scheduled review	15 March 2023

7.1 General principles

7.1.1 Life sentences must be imposed for murder. They can also be imposed for other extremely serious offences under a "discretionary life sentence", although these are far less common since the introduction of Orders for Lifelong Restriction. The Scottish Sentencing Council provided the following definition of a life sentence. "*This sentence lasts for the rest of a person's life. Offenders given a life sentence will serve a period in prison or detention set by the judge. They will then only be released into the community on licence if the Parole Board thinks they are not a risk to the public. On licence means under certain conditions. However, offenders can be recalled to prison at any time if they break, or are at risk of breaking, the terms of their licence*." A life sentence is an indeterminate sentence because it does not have a fixed end point. This description also applies to an Order for Lifelong Restriction which is defined as a life sentence in Section 2(1) of the 1993 Act. The 1993 Act is available to members through the Portal.

7.1.2 Decisions in the cases of indeterminate sentence prisoners are a matter for a Tribunal of the Board constituted under Part IV of the Parole Board Rules 2001. The timing of the first Tribunal in an indeterminate sentence prisoner's case is triggered by expiry of the punishment part set by the trial judge. The punishment part is concerned with retribution and deterrence NOT with the protection of the public, that being the function of a Parole Board Tribunal.

7.2 Options

7.2.1 The Tribunal has the power to direct release or not as the case may be and from time to time to adjourn a hearing. Where the Tribunal has not yet commenced, it will be referred to as a postponement.

7.2.2 In making a decision the Tribunal applies the test specified by the 1993 Act – It may only direct release when it is satisfied "that it is no longer necessary for the protection of the public that the prisoner should be confined". This test has been the subject of judicial scrutiny and the test has been stated to mean “risk to life and limb provides the sole ground for continued detention”.

7.2.3 Decisions may be by a majority.

7.3 Re-release considerations

7.3.1 In the case of a recalled indeterminate sentence prisoner any member who participated in the recall decision is precluded by law from taking part in the immediate re-release consideration. For the sake of clarity, this same provision applies in relation to any other prisoner recalled by the Board.

7.4 Tribunal members’ responsibilities

7.4.1 The Chair has a number of individual powers, mostly on preliminary matters before the Tribunal sits, as well as collective powers with the other members. Wherever possible the Chair should seek the views of the other Tribunal members before reaching a decision. The Chair’s individual powers include:

I) Whether to relax the general rule that proceedings are confidential (Rule 9(c) (i))

II) The variation of time specified elsewhere in the Rules (Rule 10(2)(a))

III) The correction of errors by certificate (Rule 12(3))

IV) The variation of time specified elsewhere in the Rules for Part IV cases (Rule 17(2))

V) The power to give, vary or revoke directions (Rule 19(2) and 19(3))

VI) To decide to hold a preliminary hearing (Rule 19(4))

VII) To decide on attendees at any preliminary hearing (Rule 19(6))

VIII) The power to grant or refuse witnesses to attend the Tribunal to give evidence or produce documents (Rule 23(4))

IX) The power to cite witnesses (Rule 24(2))

X) The power to grant or refuse a request for witnesses to be cited to attend the Tribunal to give evidence or produce documents (Rule 24(6))

XI) The power to grant or refuse the attendance at the Tribunal of someone to accompany any party (Rule 25(4))

XII) The power to grant or refuse the attendance at the Tribunal of security personnel (Rule 26(3))

XIII)The power to authorise the attendance of victims at the Tribunal (Rule 26A(5))

7.4.2 There are other powers that apply to the Chair of a Tribunal. It should be noted that a decision to dispense with an oral hearing in terms of Rule 20 is one for the Tribunal, and cannot be made by the Chair alone. The power to decide whether to issue a summary minute in cases where the decision is not to release also lies with the Tribunal.

7.4.3 The Board is not required to provide a transcript of the hearing. The responsibility for taking relevant notes falls to the parties and to the members of the Tribunal. Tribunal notes are relevant for preparing the decision minute as well as for responding to any subsequent query from the parties. Notes may also be relevant in the case of the decision being judicially reviewed. It is good practice in the course of questions posed to a party by a member of the Tribunal for the other members to take notes relative to the answers provided by the party.

7.4.4 An early intimation of the decision will be sent where possible to the parties within one working day. If the recommendation is for release then licence conditions will also be attached. The decision and the reasons for it and any associated recommendations will be set out in the decision minute that must be sent to the parties not later than 10 working days after the end of the hearing.

Section 8 Tribunals & review periods

Date of last review	15 March 2021
Next scheduled review	15 March 2023

8.1 Indeterminate sentence prisoner and extended sentence tribunals

8.1.1 Rule 27 of the Parole Board (Scotland) Rules 2001 provides that the tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings. The tribunal is required, as far as it appears appropriate, to avoid formality in the proceedings. Beyond these requirements, there is no prescribed procedure in the Rules and the Board has adopted a form of procedure that experience shows suits most cases. However, there is flexibility to adopt any other suitable form of proceedings in any particular case. The procedure that is to be adopted must be explained to the parties before the tribunal commences hearing the case.

8.1.2 A tribunal is not subject to the normal rules of evidence and may consider and take into account material that would normally be considered inadmissible in first instance criminal proceedings. The aim is to provide a forum where everyone can speak candidly about the issues. The fundamental requirement is that the proceedings are fair. The Tribunal will require to adapt the proceedings where there is Rule 6 information, and the guidance on how to approach this can be found elsewhere in this guidance.

8.1.3 The parties in a case are the Scottish Ministers and the prisoner, and each is entitled to be represented. The prisoner is usually legally represented. Historically Scottish Ministers were represented by their official, a member of the Justice Directorate, who attended along with the Lifer Liaison Officer (LLO) or Early Release Liaison Officer (ERLO) of the establishment where the prisoner is in custody. In recent years Scottish Ministers have chosen not to send an official. However, Scottish

Ministers continue to be parties as defined in the Parole Board Rules and retain the right to send an official to a tribunal.

8.1.4 In advance of the tribunal, the members should consider whether witnesses might need to be cited to attend. Where social workers are recommending release, consideration should be given to whether they will be required to attend the Tribunal to speak to their recommendations. Tribunal members should have in mind the need to ensure that these views have been fully explored prior to reaching a decision, and, if the Tribunal comes to a different view, to make clear within the minute why they rejected the evidence of professional witnesses.

8.1.5 The conduct and outcomes of tribunals are kept under general scrutiny by the Chair and Chief Executive of Parole Scotland.

8.2 Citing social work witnesses

8.2.1 Where the Tribunal considers that a social worker is required as a witness then the Chair of the Tribunal shall arrange for Parole Scotland to issue the citation. Where a party (normally the prisoner's solicitor) asks a tribunal to authorise the attendance of a social worker as a witness to attend the hearing (Rule 23(1)) and the request is granted, it will be appropriate for the Chair of the Tribunal to ask Parole Scotland to issue a citation. This will avoid a situation arising where a social worker does not attend the Tribunal because they believe that a request from a solicitor does not carry the same weight as a citation.

8.3 Decisions to release

8.3.1 The decision should be intimated on the day that it is taken, unless there are good reasons why this cannot be done. The intimation is done by the electronic submission of the Early Intimation of Decision (EID) form to Parole Scotland.

8.3.2 Where the Tribunal directs release it must make recommendations for all conditions to be included in a licence.

8.4 No release decisions - further reviews and recommendations

8.4.1 If not directing release, the tribunal must fix the date of the next review by a Tribunal. The 1993 Act specifies that the review period cannot exceed two years from the date of the decision in indeterminate sentence prisoner cases. For recalled extended sentence prisoner cases, the 1993 Act specifies that the prisoner cannot require Scottish Ministers to refer his case to the Board within a year of the last decision. This does not limit the Board's flexibility in terms of setting a review period which can be less than 12 months. The period will be fixed with reference to the circumstances of the prisoner, the outline of the future sentence management plan and any advisory recommendations made by the tribunal. The decision can include the Tribunal's views on the degree of risk, the steps needed to address this and the desirability of transfer of the prisoner to different conditions within the options available. Scottish Ministers have indicated that serious consideration will be given to any such views and, if accepted, will take all reasonable steps to implement them.

8.4.2 The Board, at the request of an indeterminate sentence prisoner, may direct the Scottish Ministers to refer the case to the Board before the date fixed for the next hearing. A request under this provision could be made by an indeterminate sentence prisoner if, for example, he or she considers that recommendations have been implemented successfully well before the date fixed for the next hearing. Such requests are currently considered by the Board at a recall and ad hoc meeting.

Section 9 Recommendations and directions

Date of last review	15 March 2021
Next scheduled review	15 March 2023

9.1 Recommendations and directions open to the Board in Part III cases

9.1.1 The range of recommendations and directions open to the Board is extensive. Recommendations to Scottish Ministers are made before the first release and in respect of licence conditions or transfer of supervision. For everything else the Board makes directions. The following are the most common recommendations and directions:

I. Recommend release with licence conditions. This can be at the Parole Qualifying Date (PQD) or at a subsequent review.

II. Recommend revocation of licence and recall to custody. For clarity, this also applies in Part IV cases.

III. Recommend release with a forward date. This must be soundly based on information contained in the dossier and the Board's expectations of what is required to happen up to the release date clearly specified in the reasons for example, satisfactorily complete offending behaviour work or counselling, experience home leaves from open conditions.

IV. Not to recommend release and fix a further review. The review period is not more than 12 months, but a period of less than 12 months can be fixed.

V. Not to recommend release and, if there is to be no other review due or recommended before the EDL, to recommend licence conditions for a non-parole licence.

VI. Not to recommend release and, if there is no other review due or recommended to consider early release on parole before the EDL,

recommend that an updated dossier is returned a short period (usually 10 weeks) before the EDL to consider recommending additional licence conditions for a non-parole licence. This procedure is only used in cases where there may be some likelihood of change for example to the release plan, or in terms of the outcome of on-going offending behaviour work, that would be relevant to proper consideration of additional licence conditions. The prisoner is entitled to submit representations in relation to the licence conditions which may be imposed. It should be borne in mind that such further reviews necessitate the preparation of a new dossier and members should avoid requiring this unless necessary.

VII. Defer or adjourn a case for further information that is already in the public domain and should have been made available to the Board, or to allow the prisoner to comment on information tabled less than four weeks before the case is considered.

VIII. In the case of a prisoner's immediate re-release after recall, direct release on recommended licence conditions.

IX. In the case of a prisoner's immediate re-release after recall decide not to direct release and review in normal course that is, annually, where there is more than 12 months to the SED. A review in less than 12 months may also be directed.

X. In subsequent reviews following recall, the Board will direct or not direct release in extended sentence prisoner cases. In determinate sentence prisoner cases the Board will recommend or not recommend release.

XI. Recommend licence conditions in cases referred for that specific purpose. Such cases include prisoners who have not previously been recommended for release on parole, prisoners who have self-rejected from the parole process and extended sentence prisoners where the custodial part is less than four years but the combined sentence is four years or more..

XII. Recommend transfer of supervision or not as the case may be.

XIII. Recommend variation of licence conditions or insertion of new conditions where licence conditions have previously been recommended.

XIV. Recommend termination of supervision or not as the case may be.

XV. Direct that an oral hearing of the case should be held. In relation to oral hearings the Board has regard to section 17 of this guidance.

9.1.2 A period of six months is usually considered the minimum effective review period because of the time required for preparation of the dossier and subsequent processes. A shorter review period can be fixed, if there is good reason for doing so. However, deferrals (or adjournments of oral hearings) are usually suggested for further considerations within 6 months to avoid the need for preparation of a new dossier.

9.1.3 The treatment of Children and Young People cases is worthy of particular mention with the additional considerations available to the Board being:

II) To recommend release on licence at any time with licence conditions (the Board is not bound to wait until PQD in such cases). When a child or young person under 18 is released it is always with licence conditions recommended by the Board regardless of whether or not the sentence was short-term or long-term.

III) To recommend licence conditions for release at EDL whether or not the sentence was short-term or long-term.

Section 10 Presenting a case

Date of last review	29 September 2021
Next scheduled review	29 September 2023

10.1 General guidelines

10.1.1 All members are required to read the dossiers tabled for a casework meeting and come to a view on the merits of each case.

10.1.2 Members will have placed their draft casework minutes in the relevant network folder 48 hours before the casework meeting. Subject to changes agreed at the casework meeting, the casework minute will form the basis for the final approved minute issued to the prisoner and Ministers. The principal responsibility for drafting the decision rests with the presenting member, although the Chair will scrutinise the decision for accuracy. Once the decision is in a form approved by all members present, then the minute will be signed off by the person who chaired the meeting or the part where the case was discussed. Alternative arrangements will be made where the chair will be absent during that period.

10.1.3 Everyone present is expected to have read the dossier and the draft casework minute beforehand. When working remotely, it is helpful to share the minute with the other members on the Teams screen while it is being approved. Avoid repeating minute details which are already known to the other members present.

10.1.4 Start with a brief introduction covering identification and location of the prisoner and the reason for the case being considered.

10.1.5 State the recommendation. It is not necessary to read the full casework minute as the other members will have read it beforehand. However, where there is disagreement on the recommendation to be made, it is helpful to focus discussion on the areas of disagreement specifically regarding risk and reasons. The casework minute is to be produced in the format that will be issued to the prisoner. If unable to state a recommendation then please say so at the outset.

10.1.6 The casework minute should reflect the balance between positive and negative factors identified in the dossier reports.

10.1.7 Give a general commentary on any offending history including the nature, extent, patterns and disposals and relate these factors to the index offence(s) and likely future risk.

10.1.8 Comment on any offending behaviour programmes or related counselling that has been undertaken and the reported outcome in terms of perceived benefits and relate this to future risk.

10.1.9 Comment on the findings and conclusions of the HBR and prison based social work report. Cover family attitudes, family support, prospects of reintegration, possible adverse reaction towards the prisoner, what is different now in personal circumstances from the time of the index offence in terms of risk reduction, any victim issues, employment prospects and social work support available.

10.1.10 The casework minute should include clear links to any additional licence conditions being recommended including whether any of the conditions were recommended in the social work reports.

10.2 Record of decision

10.2.1 The casework minute is designed to support identification of the relevant information for decision making. This structure is designed to assist selection of the key elements that should be set out in the reasons for the decision. The casework minute should record the information presented, any other factors arising from discussion, the decision, any recommended additional licence conditions, reasons and any supplementary recommendations or requests. Care should be taken to record the reasons for the decision fully and accurately.

Section 11 Reasons for decisions

Date of last review	24 November 2021
Next scheduled review	24 November 2023

11.1 Introduction

11.1.1 The Board acts in a judicial capacity. As a matter of law, and just as importantly for practical considerations, the Board is required to provide reasons for its decisions and recommendations, including licence conditions. The reasons need to be intelligible and understood by the prisoner and those involved in his/her management, whether in custody or in the community. They need to be based on evidence before the Board, which the Board has accepted. The preparation of sound reasons to support decisions and recommendations is essential to avoid unnecessary subsequent clarification or explanation, or recourse to judicial review.

11.1.2 It is important that reasons accurately and adequately reflect the consideration given to a case and the basis for the decision or recommendation. Even a sound decision may be challenged if the reasons do not show that the case has been considered properly. Risk may reasonably be referred to as "manageable" or “unmanageable”. It is helpful to approach the question of risk in a staged way. Firstly, is the risk that of serious harm? If so, who is at risk, and how likely is the scenario in which serious harm is caused to them? Consideration should then be given to whether this risk could be managed by the risk management plan which will be implemented by those supervising the prisoner. It is best to avoid describing a prisoner as dangerous, although it is reasonable to quote from risk assessments or the sentencing judge report contained within the dossier. The Board in making assessments does not use any structured or accredited risk assessment tools or procedures to make its decisions, although it can take account of risk assessments completed by qualified people. Care should be taken in describing risk assessments in Board minutes to ensure that the Board's reasons for the decision are clear.

11.2 General principles

11.2.1 Reasons should be clear, accurate and concise. Short and simple sentences are best. However, undue terseness should be avoided so that misunderstanding does not arise. It is a question of striking the right balance in each case under review.

11.2.2 Members participating at a casework meeting or sitting on a tribunal or OH are collectively responsible for the reasons and their accuracy and soundness. Before ratification it is good practice and an expected function for all the Board members to check the draft minutes of the cases they participated in for accuracy. Chairs should ensure that general members are given sufficient time to review the decision minute prior to the expiry of 10 working days from the tribunal. General members should review decision minutes timeously; if they are going to be unavailable and unable to review the decision minute after the Tribunal, they should advise the Chair of this fact.

11.2.3 Members sitting on a tribunal must make their decision clear. Reasons should be unambiguous and should avoid double negatives. It is important that the reasons for the decision are stated clearly as such, and are not just a restatement of the decision itself. It is also useful to set out the reason for the referral by Scottish Ministers and the relevant statutory test that applies in the particular case. The templates provided by the Board assist with this.

11.2.4 The precise content of the reasons will vary with each case. However, there are some useful ground rules and guidance. Court decisions also provide guidance and principles to follow as a matter of good practice and some court decisions are mentioned in separate guidance on case law.

11.2.5 Always remember that the Board's primary concern is with assessment of risk to the public and reasons should be specific, factually correct, concerned with risk and risk assessment, and supported by evidence in the dossier. The reasons given should always be a balancing exercise in which evidence supporting release, (and which considers the benefit to the public and the offender) is weighed against

opposing evidence (which considers the risk to the public). It is a matter for the Board how it weighs the evidence. Be careful to ensure that the reasons given do not point towards an opposite conclusion from the decision or recommendation. Avoid gratuitous advice or comments which do not have a bearing on risk since they are unnecessary and can lead to complications and accusations of stereotyping or making assumptions about gender, race, religion, cultural or sexual orientation.

11.2.6 Concisely cover the issues, the areas of concern, and show how the decision or recommendation was reached. The reasons must be intelligible and must deal with the important issues. Reference to every material issue is unnecessary and the reader should know why the conclusion was reached on the principal issues. This approach is particularly important where the decision or recommendation is contrary to conclusions or recommendations in dossier reports. In that case, the Board should set out its reasons for reaching a different conclusion. It is the Board's duty to form its own judgement on the reports in the dossier. It is not obliged to adopt the conclusions of others; its duty is to consider the evidence and decide for itself whether it is satisfied or otherwise about the acceptability of risk. Where the Board has reached a different conclusion from that of professional witnesses then it is very important that the Board sets out the reasons why the professional evidence has not been accepted. The competing views should be scrutinised and the decision should clearly identify the grounds on which it made its decision.

The following approaches are recommended:

i) Start with the context of the index offence, its seriousness etc. relative to any previous offending history. This can be an effective tool to formulate the risk presented by the offender, and whether it would constitute a risk of serious harm.

ii) Consider the prisoner's conduct in custody. Caution is required because the Board should not rely solely on behaviour in custody as evidence of ability or motivation to fully comply with supervision.

iii) Deal with the prisoner's approach to the causes and consequences of offending behaviour, the steps being taken to confront the issues of concern and the assessed outcome.

iv) Refer to release plans and the likelihood or otherwise of them assisting with reintegration and rehabilitation. Attitudes towards supervision are important in relation to the reduction of risk or otherwise.

v) Evidence of previous compliance with, or breaches of, community-based court disposals and bail may be relevant.

vi) Specify why any additional licence condition is being recommended. The impact on the prisoner's human rights under the European Convention must always be considered in the context of risk and the principle of proportionality (R v Secretary of State for Home Department - Craven (2001)**)**; licence conditions must be demonstrably lawful, proportionate and necessary for the aim of protecting public safety. Their meaning and effect should be clear and they should not give rise to any significant ambiguity.

vii) Indicate the remaining outstanding areas of concern. Ensure wherever possible that relevant offending behaviour programmes or counselling are available.

viii) Avoid jargon or hackneyed phrases - they may mean different things in different cases. The Parole Board Style Guide can assist.

ix) Avoid obtuse or pompous phrases and do not use Latin.

x) Avoid use of absolutes or precise numbers. Remember that inaccuracies on such points may exist, even though they remain unchallenged up to the point the case is considered. For example, referring to "no evidence" invites argument or challenge to show there is some evidence. Such statements are better expressed as "little evidence". Similarly do not use absolute numbers in relation to previous convictions, misconduct reports or drug tests as this invites

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unnecessary argument or challenge. Phrases such as "significant offending history' "several misconduct reports" etc. are better.

xi) Where release is not recommended and the case will be reviewed again in the future, it is important that the reasons do not appear to restrict the discretion of a future Board or tribunal. It can be helpful to explain why the Board consider that completing a course of action could support an application for release at a subsequent hearing. A therapeutic programme can reduce risk and build skills for release into the community while a period at the Open Estate can provide evidence of the prisoner's ability to apply his/her skills. However, the Board's role is to assess risk rather than manage the sentence and excessive prescription may make a future Tribunal's consideration more difficult.

xii) The Court of Session has stated that the Board require to exercise "*anxious scrutiny*" of the ongoing detention of indeterminate sentence prisoners, and that this requirement will increase the longer a prisoner is in custody following the expiry of their punishment part. The reasons for the decision should be expressed in a way which demonstrates that the Board has carried out this "*anxious scrutiny*"

11.3 Information received after decision

11.3.1 There may be cases where information is received after consideration by a tribunal, oral hearing or casework meeting. It is worth stressing that the decision made at the tribunal, oral hearing or casework meeting stands and it would not be appropriate to include information that was not available at the time the decision was made. This is because it is a fundamental requirement for fairness that the prisoner and his representative (if appointed) is aware of the facts available to the Board (unless Rule 6 applies) and has an opportunity to address them prior to or at the hearing. In circumstances where information has come to the Board after the decision has been made, it would be appropriate to advise the prisoner and his representative (if appointed) that the information was not taken into account and it will be for them to decide whether to take any further action such as request a fresh consideration or seek a judicial review.

11.4 Denial of guilt cases

11.4.1 There is no rule or policy which automatically prevents a prisoner who denies guilt from being released early and legal precedent has established that it would be unlawful for the Board to refuse parole solely on the ground of denial. There is a body of research which tends to suggest that denial, of itself, does not increase risk. However, in terms of risk assessment, prisoners who deny guilt present particular problems, since they often refuse to participate in programmes for addressing offending behaviour. This can lead to lack of information about the motivations for their offending behaviour. Consideration should therefore be given as to whether there is sufficient understanding of a prisoner's triggers and risk factors for an adequate community-facing risk management plan to be formulated and for their risk to be safely managed in the community. As in all cases, a decision must be reached taking into account all the risk and protective factors.

11.5 Lack of co-operation Cases

11.5.1 Cases that may also present difficulties are those where there has been a refusal to co-operate to a greater or lesser extent with the compilation of reports. This may or may not be in conjunction with a denial of responsibility. For example, this situation sometimes occurs in the context of an on-going appeal and the prisoner simply refuses to co-operate in the belief that to do so would prejudice his appeal. Again, each case must turn on its own facts and evidence but the lack of sufficient information of a dynamic nature, such as a release plan, to balance against the indication of risk may be a determinative factor.

11.6 Psychological and Psychiatric assessment and reports

11.6.1 The Board has agreed with the SPS that it will provide reasons whenever it requests a psychological risk assessment report. It is recommended this practice be followed when requesting other specialist reports in the context of risk assessment and/or management. Where the Board requires such risk assessments and these are not forthcoming the matter should be referred through the casework team at Parole Scotland.

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11.7 Dissenting decisions

11.7.1 There will be occasions when Board members do not agree. On these occasions a decision can be taken on the basis of the majority view. In such cases it is very important to ensure that the dissenting member's reasons for dissenting are adequately recorded in the decision minute. It may be best practice for the dissenting member to draft their own reasons, which the legal Chair can insert into the minute. Members should make every effort to ensure that all members agree with the decision minute, even if they disagree with the decision on release. Where members disagree about a form of words used in the minute, this should be addressed by insertion of a paragraph which identifies the passage over which there is disagreement and provides the alternative wording favoured by the minority member.

Section 12 Licence conditions

Date of last review	15 September 2020
Next scheduled review	15 September 2022

12.1 Introduction

12.1.1 Casework panels, oral hearing panels and tribunals, require to fix licence conditions when they are recommending or directing release. In cases where there will be no further consideration of release before the earliest date of liberation, the Board will be asked to recommend licence conditions which should apply at that point.

12.2 Test

12.2.1 The Board must be satisfied that recommended licence conditions are lawful, necessary and proportionate in order to manage safely such risk as the prisoner poses in the community.

12.3 Suggested approach

12.3.1 The Board has a template set of licence conditions, which can be found in the portal. This template should be used to form the basis of recommended licence conditions. The conditions contained in the template have been framed to comply with the law as it currently stands, and where the template contains a licence condition which is framed to achieve the aims of the panel or tribunal, it is desirable to use the wording from the template. It should be noted that the template contains the most frequently used licence conditions, and not all will be relevant to any particular case. Only necessary conditions should be used (as per the test), and conditions which are not relevant should be deleted from the template. The remaining conditions should automatically renumber in accordance with any deletions. There is a space at the end of the document for the insertion of any additional conditions not included in the template.

12.3.2 The template is now widely used by social workers, and recommendations of licence conditions within their reports will often mirror the template.

12.3.3 In considering the application of the test, the panel or tribunal will have to consider the impact of the condition on the offender, against the protection that it offers to the public in terms of managing their risk. More onerous conditions will usually require more justification (including setting out the reasons why they were deemed appropriate in the decision minute).

12.3.4 The prisoner is entitled to submit representations in relation to the licence conditions which may be recommended. If the prisoner disputes that licence conditions are lawful, proportionate and necessary, the Board may fix an oral hearing to determine the issue, if this is necessary in the interests of fairness.

12.4 Consideration of victims

12.4.1 The needs and rights of victims are often a consideration when setting licence conditions. There may be times when a fine judgement will be required but there are likely to be many situations where the rights or freedoms of the prisoner have to be curtailed to ensure that the rights of their victim(s) are protected. This is most likely to be in relation to geographical exclusions designed to protect victims from avoidable contact with the prisoner. Members should also keep in mind that applying a very precise geographical exclusion may provide more information than is necessary about a victim's home area. Geographical exclusions are not absolute as the supervising officer is able to provide prior permission to enter the excluded area. It is also worth considering that where the prisoner has a need to enter an excluded area then the supervising officer may be able to provide permission in such a way that the needs of the victim can continue to be protected.

Section 13 Subsequent developments

Date of last review	18 March 2022
Next scheduled review	18 March 2024

13.1 Introduction

13.1.1 Prisons are responsible for informing Parole Scotland of any change in the prisoner's circumstances while release is under consideration.

13.1.2 Once the dossier has been referred by SPS to the Board it is a matter for the Board to receive any representations or other information the prisoner wishes the Board to take into account. Examination of the dossier may disclose that information or a report relevant to risk assessment is missing. Board members should always be alert to the requirement for the prisoner to receive and be able to respond to any new information obtained directly by the Board after the dossier has been issued. The detail of these matters is covered in the Parole Board (Scotland) Rules which are available through the portal.

13.2 Adverse developments

13.2.1 An adverse development may have a negative impact on decision making in terms of risk assessment and could include escape, absconding, downgrading, new criminal charges, new misconduct reports or non-availability of essential factors in a release plan such as a release address. Therefore, it is essential that adverse information is taken into account in the decision making process.

13.2.2 In Part IV cases adverse information received by the Scottish Ministers before the Tribunal sits will be referred and sent to tribunal members. Adverse information can sometimes be made known during the course of the tribunal and it is good practice to seek an early update of the prisoner's situation, more so if there has been an adjournment of the tribunal.

13.2.3 . In all cases the prisoner should be given the opportunity to make representations on the terms of the adverse information or the substance of any damaging information which has been withheld where the tribunal or panel are considering attaching weight to it.

13.2.4 If an adverse report is received by the Board without representations on it from the prisoner, the Board may proceed in the absence of representations if it is considered that the adverse information is not significant to its decision. In other cases, where the adverse information suggests an unacceptable risk has emerged, it will be necessary in the interests of fairness to defer the case to allow the prisoner the opportunity to make representations about it.

13.2.5 If the prisoner has already submitted representations he or she should be advised that further representations may be submitted to the Board in respect of the adverse information within the four week period.

13.2.6 Where the adverse development concerns intelligence information, the Board or a Tribunal may consider it necessary to obtain details of the quality and reliability of the intelligence information for example where the prisoner disputes the information. The appropriateness of requesting this information will usually be clear from the circumstances and the prisoner's response. Reference should be made to the Board’s Guidance at section 32 on how to approach Rule 6 information in these circumstances.

13.2.7 Occasionally, the Tribunal or Board may receive an adverse report **after** the decision has been made to release the prisoner. The case of *Dickins* is authority that the Board has no locus to reconsider a decision after it had been intimated to the prisoner. Where the decision has been intimated and the adverse report is then received, the Board cannot change its decision. In such circumstances it may be appropriate to provide the adverse report to the community-based social worker, who may proceed as they see fit (including submitting a throughcare breach report if this is felt appropriate). The decision minute can record the adverse report, but that it was received after the decision to release was intimated.

13.2.8 The situation is different in Part III cases where the Panel has decided to release at a forward date including at the parole qualifying date (PQD). In that case, the decision to release is conditional upon consideration of any adverse reports and is not final. In these circumstances the Board can alter the decision to release at the forward date or the PQD in light of any adverse reports, up to the forward date which has been fixed or the PQD.

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Section 14 Supervision in the community

Date of last review	27 July 2020
Next scheduled review	27 July 2022

14.1 Introduction

14.1.1 The Board's decisions on whether to direct early release from prison and on appropriate licence conditions are significantly assisted through accurate information and the formulation of realistic action plans provided in reports from social workers based in the community and in prisons. These decisions by the Board define the nature and extent of compulsory statutory supervision on licence in the community.

14.1.2 The scope of social work reports is governed by the "National Outcomes and Standards for Social Work Services in the Criminal Justice System" – the "National Standards". A link to the National Standards has been provided via the Portal. The National Standards apply to the supervision of all determinate sentence prisoners released on parole and non-parole licence, and to the supervision of all licences for indeterminate sentence prisoners (life and Order for Lifelong Restriction). The following paragraphs give a brief overview.

14.1.3 The term "throughcare" refers to a range of social work services to assist prisoners to prepare for release and to help them resettle in the community. To be effective, throughcare services to serving and released prisoners must be well focused, consistent and adapted both to the characteristics of the offender and to the type of offending. The National Standards seek to ensure a consistently good minimum quality of service across local authority boundaries. The safety of the public is the primary concern but it is recognised that the successful resettlement of the offender in the community offers the best opportunity of preventing further offending.

14.2 General objectives

14.2.1 In relation to release on licence, the main activities of social workers in prisons are the assessment of risk and providing professional services to reduce risk and support reintegration. The scope of the work includes offering prisoners access to social work services, providing a range of counselling services, and various functions in relation to the provision of accredited offending behaviour programmes. The purpose of the prison social work report is to provide information to assist decision making, provide an assessment of the risk of further offending on release, and discuss release plans.

14.2.2 Social workers in the community provide a Home Background Report to assist decision making by providing a description and assessment of the prisoner's family and social context and the extent to which this is likely to be supportive, or otherwise, in assisting the prisoner to resettle successfully in the community. In addition, it is expected to provide information on the likely nature of supervision and support on release, the availability of programmes and resources to assist reintegration and reduce risk, and an assessment of the risk of reoffending or social breakdown. The basis of the report must cover family circumstances, family attitudes to the prisoner and the prospect of return to the community, the release environment, including the suitability of a release address or the local authority responsibility for the provision of accommodation, and a provisional release plan The community based social worker will evaluate the information and give an opinion on the manageability of risk in the community.

14.2.3 There should be consultation between the authors of these social work reports. This is important for two reasons. The first is to identify further work needed in the community, identify resources for this work, and make recommendations to the Board or tribunal. The second relates to the requirement for a pre-release planning meeting and this will apply in routine determinate sentence referrals. The National Standards specify that this should take place at least one month in advance of the release date and be attended by the prisoner, establishment social worker, supervising officer and any other relevant person.

14.3 Supervision

14.3.1 The frequency of supervision in the community is specified in the National Standards and in the normal course of events can be reduced after various periods have elapsed. Supervising officers have the discretion to maintain a more frequent level of supervision if the management of risk requires such an approach.

14.4 Variation of licence conditions and termination of supervision

14.4.1 Licence conditions may be subsequently inserted, varied or cancelled by Scottish Ministers after consultation with the Board. Early termination of the supervision conditions is possible. In practical terms when application is made before expiry for the variation of a licence through cancellation of the supervision requirement this leaves the offender subject to the requirement, "To be of good behaviour and to keep the peace" and liable to recall if this is breached. Applications must be preceded by a formal review and Scottish Ministers refer cases to the Board for consideration. Each referral is considered by a panel of the Board and is decided on its merits within the context of risk.

14.4.2 When considering the recall of an offender, the Board can consider additional licence conditions which enable their continuing management in the community, such as electronic monitoring, the imposition of a curfew, or random drug or alcohol testing. Other licence conditions may be suggested by the supervising officer. Members should always consider the effectiveness and proportionality of such suggested licence conditions. It is helpful if any unusual suggested licence conditions are brought to the attention of the Board, as they may warrant broader discussion.

14.4.3 If recommended by the Board, Scottish Ministers may revoke a licence by cancelling all the conditions in it, and the person will then be treated as having been released unconditionally.

14.5 Special provisions applying to life prisoners

14.5.1 Supervising Officers may apply for the termination of the supervision requirement. The supervision requirements of the licence may be lifted at the discretion of Scottish Ministers, and in accordance with a recommendation by the Board, usually once the offender has spent a significant period in the community without incident.

14.6 Transfer of supervision

14.6.1 A supervising social work department may apply for transfer of supervision to another social work department due to a licensee's change of address. Applications received by Scottish Ministers are referred for consideration to the Board. Cases will not be referred until the dossier contains acceptance information from the proposed receiving authority. Each application is considered by a panel of the Board and is decided on its merits, within the context of risk. If a licence condition should happen to specify a particular residential location (more usually a rehabilitation facility) the prisoner cannot move address until the Board approves either deletion of that condition or a specific change of address. This is a sound reason why care should be exercised before recommending that the residential facility should be named in an additional condition since there could be a negative impact on progress and rehabilitation.

14.7 Multi-Agency Public Protection Arrangements (MAPPA)

14.7.1 MAPPA are a set of statutory partnership working arrangements which places a statutory duty on the responsible authorities in a local authority area to jointly establish arrangements for assessing and managing the risk posed by certain categories of offenders. These arrangements are in addition to supervision provided by the supervising officer.

14.7.2 The fundamental purpose of MAPPA is public protection and managing the risk of serious harm. MAPPA 2014 Guidance is available through the Portal and provides detailed information of the working arrangements.

14.8 Additional Requirements

14.8.1 In addition to licence conditions set by the Board, a prisoner may be subject to additional requirements that support the management of risk in the community, for example a Sexual Offences Prevention Order.

14.9 Voluntary Assistance

14.9.1 Where the Board do not recommend or direct early release from prison, in accordance with the general principles of throughcare, prisoners should be made aware of the availability of support of a voluntary nature, involving advice, guidance and assistance prior to release.

14.9.2 The objectives of voluntary assistance (often referred to as voluntary supervision) are similar to those of statutory supervision, except that no element of compulsion can be brought to bear on the offender.

Section 15 Recall to custody

Date of last review	18 March 2022
Next scheduled review	18 March 2024

15.1 General principles

15.1.1 Recall to custody cases often represent the more testing and difficult cases for the Board to determine. In this respect, it is important to bear in mind that a number of other participants in the criminal justice system can have varying degrees of influence, positive or negative.

15.1.2 The Scottish Ministers may refer a dossier to the Board to consider grounds for recall. The Board's role is set out in the Parole Board (Scotland) Rules 2001 (the Rules). It is important to note that Rule 3(2) states that Rules 4 and 7 do not apply in recall cases: Rule 4 requires Ministers to give notice of the referral to the prisoner and Rule 7 gives the prisoner the right to make representations to the Board. In addition the requirements of Rule 5(1) are waived so that Ministers are obliged to include in the dossier only such information and documents as may be available to them at the time when they send the dossier to the Board; and they are not required to send the dossier to the prisoner.

15.1.3 Under the terms of section 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act), the Scottish Ministers may also, without referring a case to the Board, revoke a release licence if the prisoner is at liberty and recall the prisoner to custody if it is expedient in the public interest to do so and it is not practicable to await a recommendation from the Board. This course of action would normally be taken where there is an immediate need to protect the public. If the prisoner has already been taken back into custody, then Scottish Ministers may revoke the licence.

15.1.4 Under section 17(IB) of the 1993 Act the Scottish Ministers may also recall and revoke the licence of short-term prisoners released on compassionate grounds.

15.1.5 After a prisoner falling into any of these categories has been returned to custody, the Scottish Ministers must refer the revocation back to the Board so that the Board can consider whether or not it is appropriate to direct that the offender be re-released.

15.1.6 In recall cases the question to be determined by the Board is whether or not, in the whole circumstances of the case, it is in the public interest that the prisoner be recalled to custody. The Board should consider whether it is satisfied that the risks posed by the prisoner can be safely managed in the community. If it is not so satisfied, the prisoner's licence should be revoked and he/she should be recalled to custody. It should be noted that this is the test which should be applied in every case at the point of consideration of recall. The test for re-release may be different and the section on re-release should be referred to at that stage. A number of discretionary sanctions exist to deal with breaches of a licence without referring the case to the Board to consider grounds for recall. Much will depend on the opinions of the supervising officer and/or Scottish Ministers based on the context and seriousness of the breach and the perceived level of risk to public safety. For example, a supervising officer may issue oral and written warnings and Scottish Ministers may issue a warning letter. Further information is contained in the relevant section of the National Standards for Throughcare which are available through the Portal.

15.1.7 A recall case will normally be referred to the Board with a Throughcare Licence Breach Report (TLBR or "breach report") prepared by the prisoner's supervising officer. Rule 8 of the Rules provides that "in dealing with a case of a person, the Board may take into account any matter which it considers to be relevant, including, but without prejudice to the foregoing generality, any of the following matters:–

(a) the nature and circumstances of any offence of which that person has been convicted or found guilty by a court;

(b) that person's conduct since the date of his or her current sentence or sentences;

(c) the risk of that person committing any offence or causing harm to any other person if he or she were to be released on licence, remain on licence or be re-released on licence as the case may be; and

(d) what that person intends to do if he or she were to be released on licence, remain on licence or be re-released on licence, as the case may be, and the likelihood of that person fulfilling those intentions."

15.1.8 Once a case is referred to the Board it must consider the whole circumstances in relation to relevant risk factors. These could include the overall response to supervision in the community; the nature and circumstances of any alleged offending, such as violence, and the relationship to the index offences; new convictions; substance misuse; and other behaviour that has a bearing on their previous offending history and current circumstances. While the Board will consider the recommendation made in the TLBR, the decision on recall lies with the Board alone and will be on the basis of risk and whether or not this can be safely managed in the community.

15.1.9 This approach is flexible and means there is, in practice, no presumption in favour of recall to custody. An important circumstance which the Board will require to take into account is whether or not the prisoner has been in contact with his or her supervising officer, and whether the prisoner's whereabouts are known. It is also worth noting that supervising officers are required to submit a breach report to Scottish Ministers if there has been further offending regardless of its seriousness or any link to past offending. The TLBR may simply describe a deterioration in the prisoner's compliance with his or her licence, which has raised questions about their management, or it may also include a report from Police Scotland about the questioning or detention of the prisoner. The TLBR should also include a report on other sanctions imposed earlier by the supervising officer, such as verbal or written warnings. The report will include the supervising officer's recommendation about whether a warning letter or recall is merited.

15.1.10 If the Board decides not to recall the prisoner it may recommend the issue of a warning letter. The Board may also recommend the insertion of further additional conditions on the licence so as to manage a particular aspect of behaviour.

15.1.11 Where a prisoner is released on licence and at the time of release there are outstanding charges (whether or not a subsequent conviction results), such information may be taken into account when considering the grounds for recall.

15.1.12 When a recall order is issued directly by Scottish Ministers or via a recommendation of the Board there is no mechanism by which the recall order can be rescinded, and the order must be executed. It is then a matter for the Board at the re-release stage to take into account any errors that have come to light and that had a bearing upon the recall decision. Such errors may have occurred for any reason including the dossier containing incomplete information.

15.2 Examination of the dossier

15.2.1 When Scottish Ministers refer a case to the Board to consider recall to custody, the dossier includes the reports and information prepared at the time when the case was last considered, the minutes of the decision or recommendation, a copy of the release licence, and any new information considered relevant particularly any TLBR. At this stage there is no disclosure of the dossier to the prisoner and the case is allocated to a casework meeting of the Board that will be considering recall cases.

15.2.2 All release licences contain the standard condition, "You shall be of good behaviour and shall keep the peace". Further charges may constitute grounds for recall but do not imply a presumption of guilt. Experience shows that when the Board has recalled a prisoner on the basis of unacceptable risk solely associated with alleged offending, the Procurator Fiscal may desert criminal proceedings by virtue of the fact of recall. Although such a decision will have been taken in the exercise of the Procurator Fiscal's discretion, submissions may also have been made to the Procurator Fiscal on behalf of the prisoner. Crown Office is aware of the Board's concern since potentially this situation may leave the Board with little option but to re-release the prisoner on licence. However, the Board is entitled to look at all of the relevant facts including the behaviour which led to the further charges. Situations like this emphasise the need for care in constructing the reasons for a decision recommending recall to custody. Where appropriate, due regard should be given to

overall behaviour and the reasons given should not focus too narrowly on the alleged offence.

15.2.3 There is no requirement for a life or other licensee to have been convicted of a further offence before being recalled. An unacceptable risk to the public can be demonstrated by a pattern of conduct that falls short of charge or conviction, and in particular, any pattern of conduct that appears similar to the circumstances that led to the original offence. The various considerations taken into account by the Board and Scottish Ministers are different from those involved in the investigation, prosecution and trial of criminal charges. The Board does not require to be satisfied beyond a reasonable doubt before taking matters into account. In addition, the Board and Scottish Ministers are entitled to take steps in light of an apparent breach of licence conditions irrespective of what decisions are being taken elsewhere in the criminal justice system.

15.3 Deferring a case

15.3.1 The legal advice available to the Board is that in each case the Board should seek to reach a decision on the basis of the information referred by Scottish Ministers. Consequently, the Board should not defer consideration of a case unless there are serious gaps or inconsistencies in the evidence and it is clear that a decision cannot properly be made without potentially prejudicing the interests of fairness and justice in respect of the prisoner and/or public safety.

15.3.2 The decision whether to defer a case for additional information or to reach a decision to revoke a prisoner's licence on the referred information may sometimes be quite difficult, because the TLBR and the dossier as a whole may have been compiled quickly before full information is available, and will usually not include the prisoner's representations or explanations. Decisions to defer should not be made lightly. A decision to defer for further information should not be made to obtain information that will only become available at some unspecified point in the future. Where there are evident indicators of unacceptable risk it will generally be better to recommend the recall of the prisoner and make a parallel request for further information to be available for consideration after the prisoner has been returned to custody.

15.4 Additional factors

15.4.1 The fear of recall to custody can sometimes have a negative effect on supervision in the community. Practical experience of recall cases indicates that emerging difficulties are often not disclosed to a supervising officer until they are so serious that the risk may be unacceptable and recall may be the only option, rather than other discretionary sanctions.

15.4.2 Where a prisoner is released on licence the details are held on the computer database maintained by Police Scotland via the Scottish Criminal Records Online (SCRO). This information is available to operational police officers throughout Scotland. When an arrest is made there is a routine requirement to check this database. This process helps ensure that when a prisoner comes to the attention of the police, the supervising officer will be advised and can consider the impact on risk and manageability in the community.

15.4.3 The Scottish Ministers monitor outstanding recall orders of a long duration and in cases where there is an exceptional delay in executing a recall order an explanation may be requested from Police Scotland. The SPS now has a procedure for checking all admissions against outstanding recall orders. This helps ensure that when the Board recommends recall it is enacted.

15.4.4 A determinate sentence prisoner is deemed to be unlawfully at large (UAL) for the period between issue of a recall order and return to custody, and this period is added to the sentence and changes the sentence end date.

15.4.5 The Board's recall recommendation will be sent to Scottish Ministers by Parole Scotland. The Scottish Ministers issue recall orders to the police for execution. On receipt of a recall order it is processed and recorded on various databases, including the Police National Computer (PNC), a UK national facility, and this allows operational police officers throughout Scotland, England and Wales access to the information. Broadly speaking, the rules for checking the PNC are the same as those

for the SCRO. The order is also allocated to local operational officers for enquiry and execution.

15.5 Casework meeting to consider recall cases

15.5.1 Two members of the Board are assigned to the regular casework meetings of the Board that consider recall cases. The casework meeting considering grounds for recall must be independent and impartial. Rules 14 and 18 require that a member of a casework meeting which recommended recall to custody cannot sit on any subsequent casework meeting or tribunal constituted to consider the re-release of that prisoner following his or her return to custody and this approach addresses any concerns about perceived lack of impartiality or independence.

Section 16 Consideration of re-release

Date of last review	24 November 2021
Next scheduled review	24 November 2023

16.1 General principles

16.1.1 On being returned to custody the prisoner will be advised of the reasons for recall. The reasons are contained in the recall order. Thereafter the Scottish Ministers will make arrangements for the dossier to be issued to the prisoner.

16.1.2 The Scottish Ministers also advise the prisoner by letter of the right to submit representations and any other information to the Board.

16.1.3 Cases considered under Part IV of the Parole Board Rules (Indeterminate sentence prisoners and extended sentence prisoners who are in the extension part) have their cases considered by a Tribunal. Other cases for re-release are considered under Part III of the Parole Board Rules by a panel of the Board. In non-tribunal referrals, re-release will be considered whether or not representations have been received. In tribunal referrals, re-release will be considered at a Tribunal whether or not representations have been received beforehand. No assumption is to be made that the prisoner is content to resume serving his or her sentence.

16.1.4 The Parole Board Rules specify that a Board member who was a member of the panel that recommended the prisoner's recall to custody cannot sit as a member of a Tribunal or panel to consider that prisoner's re-release.

16.1.5 By convention the Board has arranged casework meetings so that cases being considered for re-release under Part III of the Parole Board Rules are chaired by a legal member. The requirement for a legal chair in Part III re-release cases is not specified in the 1993 Act or in the Parole Board Rules and the Board

may from time-to-time depart from those arrangements when scheduling needs dictate.

16.2 Procedure following referral

16.2.1 On referral of a case, Scottish Ministers include in the dossier the reports and the information that was available at the time when the case was considered for recall to custody, the minutes of the decision or recommendation, and any new information considered relevant. An updated custody report, dealing with the prisoner's conduct since his recall, is usually provided, although this often arrives as a late paper, after the dossier has been issued.

16.2.2 There may occasionally be representations from the prisoner at the referral stage but it is more usual that the Board receives representations after referral. It should be noted that in Tribunal cases representations tend to be submitted less often. This is possibly due to the availability of legal representation at the oral hearing of a case.

16.2.3 On receipt of a referral in a Tribunal case Parole Scotland ensures that the necessary arrangements are made for the hearing to take place on the appointed day. This includes appointing the Chair and other members of the Tribunal and issuing copies of the dossier.

16.3 Examination of the dossier

16.3.1 On receipt of the dossier it will be examined from the perspectives of presenting a case, or participating in a Tribunal. It is a matter for Board members to satisfy themselves that the Tribunal or the re-release panel has all the relevant information necessary to make a decision or recommendation. The re-release panel has the option to direct re-release, not to direct re-release, to direct that an oral hearing be convened or to defer for further information.

16.4 Parole Board considerations

16.4.1 Cases where re-release is to be considered by a Tribunal are conducted in accordance with Part IV of The Parole Board Rules. A panel of the Board will sit to consider non-tribunal cases under Part III of The Parole Board Rules and that panel will also decide whether an oral hearing of the case may be required.

16.5 Deferring or adjourning a Case

16.5.1 The Board's general practice is that there is a strong presumption against deferral, postponement or adjournment at the stage of considering re-release. Each case should be carefully weighed in the context of reducing the potential for the prisoner to be detained in custody unnecessarily. For example, cases should not routinely be delayed for the outcome of a future court case.

16.5.2 In cases where a panel of the Board is considering re-release under Part III of the Parole Board Rules at a casework meeting, it must be remembered that any further information submitted to the Board after referral of the dossier must be provided to the prisoner and representations invited. This normally includes the substance of damaging information under Rule 6 although in certain circumstances the substance will not be provided. In oral hearing cases under Part III of the Parole Board Rules and Tribunal cases under Part IV of the Parole Board Rules there are preliminary procedures that can be invoked to avoid a hearing having to be later adjourned. However, where necessary the oral hearing or Tribunal has the power to adjourn.

16.6 Decisions to release

16.6.1 If a Tribunal decides to direct release, the decision is communicated as quickly as possible to allow Scottish Ministers to effect re-release promptly. It is the role of Scottish Ministers not the Board to decide when to release. The normal practice will be for the Chair of the Tribunal to provide SPS with an Early Intimation of Decision (EID) and licence conditions (if applicable) on the day. The formal decision minute, with full reasons for the decision, must be sent to the parties within

10 working days of the hearing. Release is on a life licence in the case of an indeterminate sentence prisoner. Release is on a parole licence in the case of an extended sentence prisoner since it is release at a time when otherwise the prisoner would be in custody.

16.6.2 In non-tribunal cases (Part III of the Parole Board Rules), the decision is routinely communicated as quickly as possible to allow Scottish Ministers to effect re-release promptly. It is not the Board's role to decide when Scottish Ministers should release. That is for Scottish Ministers to decide. The normal practice will be for the panel of the Board to send the decision minute including licence conditions (if applicable) to Parole Scotland on the day of the decision. Parole Scotland will thereafter advise SPS.

16.7 No release decisions - further reviews

16.7.1 Where an indeterminate sentence prisoner Tribunal does not direct re-release following recall the next review must be on a date fixed by the Tribunal, such date being not more than two years from the date of the decision. The date of the next review is stated in the decision minute. It is good practice to set out the reasons why the Tribunal has selected the review period.

16.7.2 Where a Tribunal does not direct the release of an extended sentence prisoner (in the extension period) following recall, the prisoner has the right to require Scottish Ministers to refer his case to the Board to be considered not less than one year from the disposal of the previous referral. The Board can set any review period it considers appropriate but given the prisoner's right mentioned earlier, there would be little practical benefit in setting a period greater than one year and, in practice, a review period of one year is normally the longest that is fixed.

16.7.3 In other determinate sentence cases there will be no automatic referral of the case by the Scottish Ministers if there is less than 12 months to the sentence end date (SED). However, it is open to the Board to recommend another review at any time before the SED and such a recommendation will be accepted. For

example, this may be on the basis of considering whether information suggests that the prisoner may represent a manageable risk before the SED or where offending behaviour work is ongoing but due to be completed before the SED. Where there are 12 months or more to the SED, and unless the Board has specified an early review, the case will be automatically referred for consideration in 12 months.

Section 17 Oral Hearings

Date of last review	21 June 2022
Next scheduled review	21 June 2024

17.1 Introduction

17.1.1 Where the Board is considering a case at a casework meeting, the decision will be based on the information contained in the dossier, including late papers and representations from the offender and their solicitor. However, it is open to the Board to conclude that the information available in the dossier is insufficient to reach a decision, in which case it may fix an Oral Hearing (OH). This hearing will take place (either in person or by live link) in the presence of the prisoner, their legal representative, and any witnesses identified by the Board at the casework meeting as required.

17.1.2 The case of *Osborn, Booth and Reilly, [2013] UKSC 61 ; [2014] AC 1115* (*Osborn*) brought with it a significant change in the way in which the Board has to consider the need for an OH in terms of Rules 15A-H of the Parole Board (Scotland) Rules 2001 (as amended). Indeed, Rules 15A-H now have more limited application since the Board cannot be restricted only to material in the dossier.

17.1.3 The judgement in *Osborn* is worth reading and is available through the Portal. There is no doubt that the application of *Osborn* has resulted in an increase in the number of OHs ordered by the Board.

17.1.4 This guidance is intended to support Board members in decision making around the ordering of OHs. However, it is not to be considered exhaustive and there may be cases not covered here where an OH should be ordered.

17.2 When to order an OH

17.2.1 The following guidance is drawn from *Osborn* and the Board's experience since *Osborn* including petitions for judicial review on the subject of OHs.

17.2.2 In every case (including recall cases) the decision minutes should note that an OH was considered. Where an OH is refused, care must be taken to explain the reasons for refusal, particularly where an OH was requested by the prisoner or where, on the facts of the case, it required detailed consideration. Special care should be taken when the prisoner is not legally represented and may not be aware that they can ask for an OH. It is important to stress that the Board is required to consider whether fairness requires that an oral hearing is fixed, irrespective of whether the prisoner has specifically asked for one.

17.2.3 OHs are not restricted to the resolution of disputes about facts. A range of other issues may be examined at an OH.

17.2.4 The likelihood of being released following the OH is not a factor which should be taken into account - for example, where a prisoner has outstanding programme work or is held on remand for alleged fresh offending. The Board should take the whole circumstances into account when deciding whether or not to grant an OH and not refuse one simply because the possibility of release is assessed as unlikely. The Board can properly be accused of fettering its discretion if it decides in advance what the outcome of the OH might be. The Court's first stated conclusion in *Osborn* was, *"… the board should hold an Oral Hearing before determining an application for release … whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake …*".

17.2.5 The decision minute ordering an OH should contain a clear note of who is to be cited to give evidence, what evidence they are expected to give and what documents they are expected to produce. Witnesses are not limited to those who have provided reports in the dossier and panels may feel it necessary, for example, to hear from others who have contributed to the prisoner's management such as members of the Risk Management Team, occupational therapists, or prison psychologists. Up-to-date

reports and risk assessments should be requested if the available reports are outwith their normal timescales.

17.2.6 The increase in the ordering of OHs as a consequence of these developments has resulted in more work and expense for the Board but that is not a factor to be taken into account. Fairness is the touchstone, rather than work or expense. Equally, there has been an increase in the number of social workers and SPS staff cited to give evidence. That is an inevitable consequence of a broad application of *Osborn*.

17.2.7 Prisoners and the Board should be able to explore and challenge material in the dossier if fairness requires that and if decisions are to be taken on the best evidence available, especially if the prisoner wishes to make submissions about the interpretation of evidence which can only be properly explored at an OH rather than in a written submission. Some prisoners may submit that they are not able to fully express themselves in writing and this may constitute sufficient reason for setting an OH.

17.2.8 When considering casework dossiers, panels of the Board should always consider an OH whether or not that is sought by the prisoner or their lawyer and should have regard to the following checklist when deciding whether or not to order such a hearing. If the answer to any of the following questions is yes or if the Board is in doubt, an OH should be granted.

i. In order to comply with common law standards of procedural fairness and the importance to the prisoner of what is at stake, is it necessary for the Board to hold an OH before determining the issue of release?

ii. Are there facts which appear to the Board to be important which are in dispute, or where there is a significant explanation or mitigation advanced which needs to be heard orally in order fairly to determine its credibility before determining the issue of release?

iii. Is an OH necessary to enable the Board to consider the risk independently and fairly, or the means by which it should be managed and addressed?

iv. Is it maintained on tenable grounds and where the prisoner has something legitimate to contribute that a face to face encounter with the Board is necessary to enable the prisoner or their representative to put their case effectively?

v. Is it maintained on tenable grounds and where the prisoner has something legitimate to contribute that the questioning of those who have dealt with the prisoner is necessary to test their views?

vi. Is there information that would be best acquired from the prisoner in order to make the decision that affects the outcome for them?

vii. In order to act fairly, might the Board's independent consideration of risk, and of the means by which it should be managed and addressed, benefit from the closer examination which an OH can provide?

viii. Is an OH necessary to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for them?

ix. Do one or both of the social work reports contains an assessment of risk, or conclusions, with which the Board does not agree? If the Board has a reasonable and objective basis for not being prepared to accept the assessments or conclusions, an OH should be granted. It is not enough for the Board simply to substitute its view of risk and conclusions. Similarly if the prisoner has a reasonable and objective basis for disagreeing with either the risk assessment or the conclusions an OH should be granted. It will be necessary to cite the relevant social workers to attend the OH.

x. Do the social work reports significantly disagree on the assessment of risk, and/or the prisoner's management in the community? In such

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circumstances it will be necessary to ask the social workers to explain the reasons for their disagreement and to enable the panel and the prisoner's representative to test these conclusions.

xi. Are there issues of credibility that are best tested in an OH?

xii. Has a significant explanation or mitigation been advanced that needs to be heard orally in order fairly to determine its credibility?

xiii. Is there a recent positive change in behaviour, a family reconciliation, or prospects of employment and the prisoner wishes to found on any of these or other matters? If so, there is a strong argument that they should be allowed to do so at an OH where it would be possible to explore their significance. The fact that the prisoner may fail to demonstrate their significance in terms of their risk and its manageability on licence is not a reason for refusing to grant an OH to allow them the opportunity. Fairness requires the prisoner to have the opportunity to put their case to the Board in person.

xiv. If English is not the prisoner's first language, would an OH make the process fairer?

17.2.9 Panels should identify what information may be required for the OH. It is important to be mindful that citing witnesses to oral hearings takes them away from their other professional responsibilities, and the Board should carefully consider whether their attendance is necessary, or whether an addendum report may be sufficient. Where the prisoner wishes to make out their case for release and does not dispute the content of reports, it may not be necessary to cite professional witnesses to give evidence, nor to request addendum reports.

17.3 Where an OH should not be ordered

17.3.1 An OH should not be ordered where the sole reason is to obtain information that could be provided in the form of a report. Keep in mind that the prisoner must

have something legitimate to contribute to an OH and it may be necessary to explore the legitimacy of this contribution with them or with their lawyer before making a decision. No OH should be fixed on the basis of an unsupported request and the Board may find it necessary to ask the prisoner or their lawyer to provide reasonable justification if none is apparent from the dossier or any submission made by the lawyer. Lord Reed in Osborn talks of “facts which appear to the Board to be important” and that must mean important to a fair disposal of the case overall and not just from the Board’s point of view. Apart from anything else, taking a view at such an early stage is to pre-judge the case.

17.3.2 The judgement in Osborn talks of an “institutional reluctance” to order OHs. The Board should not look for ways to avoid ordering OHs but should ensure that it has good reason to order one.

17.3.3 Members of panels of the Board can take different views of the need for an OH. Given the very broad nature of Osborn, where one member supports the ordering of an OH then this difference of views, in itself, may be strongly suggestive that an OH is appropriate.

17.4 Procedure in advance of the OH

17.4.1 The Board may receive requests from solicitors or prisoners to authorise the attendance of witnesses at the OH. Each request must be considered on its own merits, and witnesses should be authorised where they can contribute evidence which will assist the members of the OH to reach a decision, particularly when factual matters are at issue. These requests are normally considered by the Chair allocated to the OH, although they may wish to take the views of the other members if that is practical. Where the request for a witness is refused, the Chair should issue the reasons for the refusal.

17.4.2 The Chair should arrange for Parole Scotland to issue a citation to social workers who are required as witnesses. This will avoid a situation arising where a social work witness does not attend the OH because they believe that a request from a prisoner or solicitor does not carry the same weight as a citation.

17.4.2 The Board may receive requests from witnesses (such as social workers) to be excused from attending the OH. Again, these decisions are for the Chair, who should consult with the other members whenever possible. In reaching a decision on the excusal of witnesses, the members may wish to consider the following-

I) The decision to release at an OH will often result in the immediate release of the prisoner. Accordingly, any postponement of the hearing will result in the prisoner remaining in prison until the hearing is rescheduled and takes place. Members must have regard to Article 5 of the European Convention on Human Rights, which prohibits arbitrary detention, and should avoid postponements unless they cannot be avoided, having regard to the reasons put forward.

II) The panel will therefore wish to consider whether the reason that a witness cannot attend is a good one. If not, the witness may be asked by Parole Scotland to attend in accordance with the citation. However, the panel will also wish to consider whether the information to be provided by the witness can be obtained by other means, such as by preparation of a supplementary report, or the attendance of a colleague (such as a team leader) who can become familiar with the circumstances of the case and dossier in advance of the hearing, and provide evidence on the matters at issue to the hearing. It may be appropriate to ask Parole Scotland to take the views of the solicitor before making such a decision.

17.5 Procedure at the OH

17.5.1 **It is very important to remember that witnesses may be anxious about giving evidence. There is an obligation on the Chair to ensure that witnesses are treated with courtesy and respect, and are not inconvenienced beyond what is necessary. Chairs will require to be vigilant about the way that witnesses or the prisoner are questioned and to intervene if the questioning becomes aggressive, unfair or inappropriate.**

17.5.2 The Board is not bound by rules of evidence, and Rule 15 of the Parole Board (Scotland) Rules 2001 provides that the Board may regulate its own procedure, subject to the other rules.

17.5.3 It will be a matter for the Chair, usually after consultation with the other members, to determine the procedure to be adopted in each case. The Chair should set out the proposed procedure and note any views from the solicitor, although the final decision on the procedure rests with the panel. It can also be very helpful to try and identify which factual matters are disputed, and which are accepted, as this can allow the hearing to focus on the live issues before it.

17.5.4 It is permissible (and indeed appropriate) for witnesses to be present at the hearing prior to giving their evidence. An example of this would be a community-based social worker (CBSW), who is likely to be asked for their opinion on whether risk can be managed safely in the community. This opinion should be informed by all information available to the panel, and accordingly the CBSW should usually hear the evidence from the ERLO as to the prisoner's conduct in custody.

17.5.5 It is also permissible for more than one witness to answer questions in the same chapter of evidence, for example, where the prison-based social worker (PBSW) and CBSW are both present and providing evidence on risk. Questions can be put to either or both of them as appropriate. Chairs will wish to clearly note who has provided which evidence during the hearing.

17.5.6 Once the professional witnesses have given evidence then they should be released from the Hearing unless there is good reason to ask them to remain.

17.5.7 It is almost always the case that the prisoner should answer questions last. This is in accordance with the requirement that the hearing is fair, and that the prisoner has the chance to address anything else which has been said during the hearing.

17.5.8 At the end of the OH, the prisoner's legal representative should be invited to make closing submissions.

Section 18 Home Detention Curfew – appeal against recall

Date of last review	14 December 2020
Next scheduled review	14 December 2022

18.1 The Board's responsibilities

18.1.1 The 1993 Act specifies the criteria by which prisoners may be released subject to curfew conditions. In terms of these provisions, Ministers have the power to release certain offenders on licence at a date earlier than that on which they would have been returned to the community, subject to certain statutory requirements being met. Section 3AA of the 1993 Act provides that SPS on behalf of Scottish Ministers may release on licence a short-term prisoner serving a sentence of imprisonment for a term of three months or more, or a long-term prisoner whose release on parole having served one-half of his sentence has been recommended by the Parole Board.

18.1.2 Prisoners released in terms of Section 3AA of the 1993 Act may be recalled to custody in certain circumstances. Where it appears to Ministers that a prisoner released on licence has failed to comply with any condition included in his licence, they may revoke the licence and recall the person to prison.

18.1.3 The Board acts as the appellate body for consideration of appeals against revocation of HDC licence. Any person whose licence is revoked for any reason has the right to be informed of the reasons for the revocation and of his right to make representations in writing with respect to the revocation to the Scottish Ministers. On 1 October 2020, the Management of Offenders (Scotland) Act 2019 introduced changes to the 1993 Act. In particular, Section 17A(2A) of the 1993 Act provides that the person must make representations within six months of the date on which they were informed of the reasons for revocation. It also provides that the Board can consider whether to allow a period in excess of six months on cause shown. Put simply, this is that there is a good reason why a period in excess of six months should be allowed. Lack of knowledge of the change in law would not normally constitute cause shown but it will be for individual panels of the Board to consider whether a case has been made for extending the six months' timescale.

18.1.4 Where the prisoner's whereabouts can no longer be monitored remotely at the place for the time being specified in the curfew condition included in the licence, he or she will be returned to custody but may be released again if remote monitoring becomes possible. The Board does not normally need to consider an appeal in such cases as they do not constitute a breach of a licence condition.

18.1.5 Where the prisoner elects to avail himself/herself of his/her right to make representations, he/she completes a pre-printed form within the prison, and submits it to Ministers, who must then refer his case to the Board. After considering the case the Parole Board may direct, or decline to direct, the Scottish Ministers to cancel the revocation.

18.1.6 Where the breach of HDC is denied, then the Board (quorum of two is the minimum required) will firstly have to establish whether the alleged breach is proven. The Board deals with these cases by consideration of papers submitted by the receiving prison, which should include the prisoner's explanation for the alleged breach.

18.1.7 In these cases, unlike the rest of the Board's work, members are not specifically addressing risk but addressing the merits of the appeal.

18.1.8 Oral hearings are competent although, given the very short timescales in this type of case, (the end date of the HDC may be a matter of days away) it is not common for the Board to decide that an oral hearing is necessary. Given the introduction of a six months' time limit for submission of representations, it will be appropriate for the Board to consider setting an OH even though it may be argued that the potential benefit in allowing the appeal no longer exists due to the offender being released.

18.1.9 The terms of the Act do not give the Board the power to do anything more than consider the case and direct Ministers either to cancel the revocation of HDC licence or not. The Board acts purely as an appellate body. It is only if the Board can uphold the appeal that it can direct cancellation of the revocation of licence. The decision on whether or not the risk is acceptable is one for SPS. In practice, given the

very short periods involved, the issues are usually fairly limited. A significant number of prisoners recalled for breaching their HDC conditions do not request a hearing, and those who do often have potentially tenable arguments to make against recall.

18.1.10 Given the introduction of a six months' time limit for submission of representations, it will be appropriate for the Board to consider such cases even though it may be argued that the potential benefit in allowing the appeal no longer exists due to the offender being released.

Section 19 Sentence types

Date of last review	21 June 2022
Next scheduled review	21 June 2024

SENTENCE TYPE	AUTOMATIC EARLY RELEASE? (CONDITIONAL OR UNCONDITIONAL) [1]	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
Short term determinate (sentence less than 4 years)	Unconditional at ½ way point of sentence) except for terrorism cases (see separate sentence type)	None	N/A
Terrorism cases – both short-term and long-term sentence prisoners	Automatic early release does not apply in terrorism cases.	Make binding recommendation about release on licence at ⅔ point – the PQD. Set or amend licence conditions except for short-term cases where a supervised release order is in place. In those cases, release on parole will be without licence conditions. Consideration of recall and rerelease where release has been with licence conditions. Board to consider if OH required for rerelease	At Board discretion. Scottish Ministers should make a further referral no later than two years after the Board's recommendation.

[1] For long-term offenders, automatic early release is at the earliest date of liberation (EDL). For determinate cases, the EDL is six months before the sentence end date. For extended sentence cases, the EDL is the end of the custodial term. For offenders sentenced before 1 February 2016, the EDL is at the two thirds point of the sentence in determinate sentence cases and at the two thirds point of the custodial term in extended sentence cases.

SENTENCE TYPE	AUTOMATIC EARLY RELEASE? (CONDITIONAL OR UNCONDITIONAL) [1]	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
Children and Young People (C&YP) (sentence less than 4 years)	Conditional at ½ way point of sentence except for terrorism cases (see separate sentence type)	Make binding recommendation about release on licence [2] at any time up to ½ way point of sentence Consideration of recall and rerelease Set or amend licence conditions Board to additionally consider if OH required due to age of child or young person	At Board discretion
Children and Young People (C&YP) (sentence of 4 years or more)	Conditional at ⅔ point of sentence except for terrorism cases (see separate sentence type)	Make binding recommendation about release on licence [2] at any time up to ⅔ point Consideration of recall and rerelease Set or amend licence conditions Board to additionally consider if OH required due to age of child or young person	At Board discretion
Short term determinate (STSO) (sentence less than 4 years)	Conditional at ½ way point of sentence) except for terrorism cases (see separate sentence type)	Consideration of recall and rerelease (SMs set licence conditions). Board to consider if OH required for rerelease	At Board discretion (recall cases only)
Long term	Conditional at the earliest date of liberation (EDL)	Make binding recommendation about release on	Annually

[2] In Children and Young Person's cases, the offender will remain on licence for the duration of their sentence including periods where they are 18 years or older

SENTENCE TYPE	AUTOMATIC EARLY RELEASE? (CONDITIONAL OR UNCONDITIONAL) [1]	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
determinate (sentence of 4 years or more)	except for terrorism cases (see separate sentence type)	licence at ½ way point – PQD Set or amend licence conditions Consideration of recall and rerelease. Board may consider if OH required for rerelease	
Extended (custodial part is less than 4 years) Where total of the custodial term and the extension period is less than 4 years then SMs set licence conditions	Conditional at ½ way point of custodial part of sentence except for terrorism cases (see separate sentence type)	Set or amend licence conditions Consideration of recall and re-release (a decision to re-release is a binding direction). For re-release a Tribunal is required if in extension period	At Board discretion. Prisoner cannot require SMs to refer to PB within 12 months [3]
Extended (custodial part is 4 years or more)	Conditional at the end of the custodial term	Make binding recommendation about release on licence at ½ way point – PQD Set or amend licence conditions. Consideration of recall and rerelease. (a decision to re-release is a binding direction). For re-release a Tribunal is required if in extension period	At Board discretion. Prisoner cannot require SMs to refer to PB within 12 months [3]
Life Sentence	N/A	Make binding direction about	Not more than two years

[3] Offender has the right to request a review in not less than 12 months

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SENTENCE TYPE	AUTOMATIC EARLY RELEASE? (CONDITIONAL OR UNCONDITIONAL) [1]	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
		release on licence at end of punishment part of sentence (Tribunal) Set, amend or terminate licence conditions Consideration of recall and rerelease. For re-release a Tribunal is required	
Order for Lifelong Restriction (OLR)	N/A	Make binding direction about release on licence at end of punishment part of sentence (Tribunal) Set, amend or terminate licence conditions Consideration of recall and rerelease. For re-release a Tribunal is required	Not more than two years
Home Detention Curfew	N/A	To decide on appeals against refusal / loss of Home Detention Curfew	N/A

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Section 20 Automatic early release

Date of last review	18 March 2022
Next scheduled review	18 March 2024

20.1 Introduction

20.1.1 Members will be aware that the automatic early release provisions are contained in the Prisoners and Criminal Proceedings (Scotland) Act 1993. This Act was amended by the Prisoners (Control of Release) (Scotland) Act 2015, which changed the arrangements for all long-term prisoners serving a sentence imposed on or after 1 February 2016. It is important that members understand the effect of the changes.

20.2 Sentence of imprisonment imposed prior to 1 February 2016

20.2.1 The Parole Qualifying Date (PQD) is at the halfway point of the sentence.

20.2.2 If not released at their PQD, the prisoner is automatically released when they have served 2/3 of the custodial part of the sentence – their Earliest Date of Liberation (EDL). Unless recalled to custody, they remain on licence for the remaining 1/3 of the sentence, plus any extension period imposed by the Court.

20.3 Sentence of imprisonment on or after 1 February 2016

20.3.1 The PQD remains at the halfway point of the sentence.

20.3.2 If not released at their PQD, the prisoner is automatically released 6 months prior to the expiry of the sentence – their EDL, and, unless recalled, they remain on licence for the 6 month period until the expiry of the sentence. However, this does not apply to prisoners who have received an extended sentence.

20.3.3 There is no automatic early release for prisoners who have received an extended sentence. These prisoners can only be released early on parole licence. Their EDL is the expiry of the custodial part of the sentence.

20.4 Points to note

20.4.1 The important date is the date that the sentence is imposed.

20.4.2 Where a sentence is altered on appeal, the Act provides that the relevant date for determining which provisions apply is the date of the imposition of the original sentence, rather than the date of the appeal.

20.4.3 The Act also provides for some (limited) flexibility in the date of release. Where a prisoner is to be released by the Scottish Ministers, they may release the prisoner on a day that is earlier than the day on which the prisoner would otherwise fall to be released, where it would be better for the prisoner's re-integration into the community. This is limited to 2 days before the due release date.

20.4.4 Members should apply the dates provided in the dossier and where there is doubt as to the dates provided, this should be clarified with SPS.

Section 21 Permanent resettlement of offenders on licence outwith Scotland

Date of last review	15 September 2020
Next scheduled review	15 September 2022

21.1 Introduction

21.1.1 The aims of supervision in the community following release from custody are to protect the public, prevent or reduce reoffending and aid the rehabilitation of the offender. Allowing offenders to transfer to other United Kingdom jurisdictions or jurisdictions outwith the UK, can assist in these aims and be of benefit both to the offender and the public in general.

21.2 Arrangements for transfer within the United Kingdom

21.2.1 Statutory provision for transfer of licences is found in section 12 of the Prisoners & Criminal Proceedings (Scotland) Act 1993. Where offenders subject to licence intend to resettle in another part of the United Kingdom, this can be done by the transfer of responsibility to the relevant local authority or the probation service in the area where the offender intends to live. It is the responsibility of Scottish Ministers to decide if the transfer should proceed. Changes to licence conditions allowing for transfer to another area are recommended by the Parole Board for Scotland (PBS).

21.2.2 Offenders have no automatic right to transfer. Each request will be considered on its individual merits, but the following points should always be considered:

- Does the offender have close family or residential ties in the jurisdiction to which transfer is sought?
- Does the offender intend to reside in the jurisdiction following the completion of the period of supervision?
- Are there are any strong compassionate or other compelling grounds to support the request?
- Would the transfer have an adverse effect on the protection of the public, prevention of reoffending or the rehabilitation of the offender?

21.2.3 Where responsibility for an offender is transferred on an unrestricted basis, they become subject to the provisions for supervision in force in the receiving jurisdiction, including for breach and recall, and no further contact with the sending jurisdiction is necessary.

21.2.4 In a restricted transfer, the law of the sending jurisdiction will continue to apply and the offender will be subject to the same duration of supervision under the same conditions as he would have been in the sending jurisdiction as well as to any other conditions specified.

21.3 Arrangements for offenders who wish to resettle outwith the United Kingdom

21.3.1 Different issues arise when an offender subject to licence wishes to resettle outwith the United Kingdom. Such cases are likely to be considered at a casework meeting, on submission of an application by the supervising officer.

21.3.2 In considering such cases, members should have regard to the fact that a licence or post-sentence supervision period imposed on an offender in Scotland is not enforceable outside the UK and therefore an offender would not be under any form of compulsory supervision by the local authority. It could be suggested that a person on licence can continue to be supervised (and accordingly that the supervision licence condition can remain in force) notwithstanding that they are living outwith the United Kingdom. Supervision might be by way of regular contact by telephone or through internet contact.

21.3.3 Therefore, when considering any application from an offender to resettle elsewhere, it must be taken into account that if an offender resettles in another country (including the Republic of Ireland, and any British Overseas Territories such as Gibraltar or Bermuda), the licence conditions or the post-sentence supervision period cannot be enforced.

21.3.4 When considering whether to amend licence conditions to permit relocation overseas, the Board will wish to have regard to the period of time spent in the community in the UK before they can assess whether the circumstances are suitable for resettlement overseas. This is to allow enough time to have passed in order to assess the offender's likelihood of reoffending or of compliance with requirements in the community. In rare circumstances it may be appropriate to allow an offender to resettle overseas directly from custody on their release into the community. This approach may be appropriate where, for example, the offender has been approved for early release on compassionate grounds or where the offender's intention to resettle abroad is considered as part of the decision of the Board to release.

21.4 Risk issues for resettlement outwith the United Kingdom

21.4.1 The usual tests in relation to the consideration of risk apply when dealing with such applications. The risk to be considered is not confined to the public of the United Kingdom, but extends to the public in whichever country in which they wish to reside and members should have regard to the risk that the offender may pose in the country of residence. In considering risk, members should consider the release management plan and assess whether the safeguards offered are sufficient to reduce the risk presented to below the required threshold always keeping in mind that supervision while the offender is abroad will be voluntary and there will be no prospect of revocation of the licence.

21.4.2 An up-to-date risk assessment is essential and when appropriate it must be prepared on the basis that there will be no compulsory supervision while the offender is abroad.

21.4.3 The Board will wish to take particular care when deciding whether to allow an offender on licence who poses a high risk of violent and/or sexual re-offending to resettle outside the UK where they would be unsupervised, or without meaningful and enforceable supervision, as this may undermine the protection of the public, and fail to meet the risk tests.

21.4.4 If the offender's resettlement abroad is approved, the decision minute must make clear to the offender whether a licence or post-sentence supervision period itself remains in force in the UK while they are abroad, and its expiry date should be made clear to the offender. For life sentence offenders, it must be made clear that the requirement will remain in place indefinitely. It will usually be appropriate to make it a condition of the remaining licence that if the offender returns to the UK prior to the expiry of the licence or post-sentence supervision period they must contact the social work or probation service through which they were formerly managed within 48 hours.

21.5 Termination of supervision for resettlement out with the United Kingdom

21.5.1 Section 12(2)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the Act) provides that a person released on licence shall remain under the supervision of a relevant officer of the local authority specified in the licence. In most circumstances, it would not be appropriate to terminate supervision on the basis that an offender may return to the UK.

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Section 22 Victim interviews

Date of last review	9 June 2021
Next scheduled review	9 June 2023

22.1 Introduction

22.1.1 When a life prisoner becomes eligible to be considered for release on parole licence, victims who have registered under the Victim Notification Scheme are notified by Scottish Ministers. They are invited to either be interviewed by a Parole Board member or to make written representations to the Board.

22.2 Conducting interviews

22.2.1 Where the victim asks for an interview, an appointment is communicated by letter to the victim, including the time and venue details, and copied to the Board member. Members are intentionally provided with a limited amount of information about the prisoner before the interview in order to preserve the prisoner's confidentiality. The member should be provided with the indictment and sentencing Judge's report. Information should be made available from Parole Scotland to the member on the interviewee's relationship with the deceased e.g. father, mother, son, daughter etc. It is helpful to explain to the victim that they are likely to know more than the member about the index offence or parole qualifying date. Interviews take place in private in a suitable venue, or may be undertaken by video conference. A member of staff from Parole Scotland will attend the interview but will not participate in the process. Supportive members of the victim's family are also welcome.

22.2.2 It is for the victim to decide what goes in the report. It is very important to remind them that the report of their interview will be read by the prisoner. It is good practice to agree to write everything that the victim has said in the report on the understanding that they can remove anything they want from the final version. This serves the dual purpose of giving the victim the chance to say everything they want to

the interviewer and feel that they have been heard, while giving them time to reflect, once they receive the report, on what they would rather the prisoner did not know.

22.2.3 The purpose of the interview should be explained to the victim and that the member conducting the interview will not be involved in the Tribunal process. The victim should be told who will receive copies of the interview report, how the information will be used by the Tribunal members, when a life prisoner qualifies for consideration for release, and the test which the Tribunal members apply and must be satisfied with before someone can be released. It should be explained to the victim that the Board will take their statement into account in reaching a decision which will be taken on risk-based criteria. Information about what happens to a life sentence prisoner and the standard progression route through closed conditions, National Top End and the Open Estate before release should also be provided. It is worth bearing in mind that not all life prisoners will go through the standard progression route prior to release and victims should be advised accordingly. An explanation of licence conditions should be given, in particular restrictions in relation to geographical locations and victims. How these conditions are supervised is a matter of great importance to victims. Time should be taken to explore any fears around being approached by the released offender in the community, together with the procedure if there is a breach of licence conditions or further offending. Once the interview has ended, the Board member writes up the interview report using the victim interview template. The template is available through the Portal. The completed interview report should be submitted to Parole Scotland within 10 working days. Parole Scotland will share it with the victim to give them the opportunity to approve its content and make any changes. Once finalised the report will be placed in the dossier.

22.2.4 An interview can be a distressing experience for the victim. They may wish to be accompanied by someone close to them who can offer comfort and support. At the time of arranging the interview Parole Scotland will ask the victim if they will need support during the process, and will refer the victim to Victim Support if that is appropriate.

22.2.5 The Board member should allow between 1-2 hours for the interview. The room should be private and prepared with tissues and water and, if necessary, by

arranging the seating appropriately. Victims must be given time to properly express themselves and to talk about how the crime affected them and its continuing impact on their lives. Victims often bring photographs of their loved one, their own written statements, or other personal items with them and may need to talk for some time about them and their loss. At the end of the interview it is best practice for the Board member to ask the victim if they have support or, having explained the role of Victim Support, would wish to be referred to the organisation. A member of Parole Scotland will follow this up on the victim's behalf.

22.2.6 The victim may also ask whether they are able to attend the Tribunal. The right of victims to request to attend a Tribunal is now enshrined in the Rules, and victims who express an interest in doing so should be advised to contact the Board in order that the request can be received and considered. It should be impressed on victims that it is for the Chair of the Tribunal to make any decisions about victims' attendance, and that any such request might be refused. It should also be impressed on them that any attendance is as an observer only, and they would not have the opportunity to speak at the Tribunal.

22.2.7 It may be appropriate to advise victims that they can request a summary minute after the Tribunal. Victims should be advised that where the decision is not to release, the discretion on whether to issue a summary minute lies with the Tribunal. Where the decision is to release, the Board is required by the Rules to issue a summary minute.

22.2.8 It is important to note that under Rule 6 of the Parole Board (Scotland) Rules 2001, the Board can decide that information passed to it should be treated as damaging information that is to be withheld from the prisoner for any of the reasons set out in Rule 6(1)(b)(i) to (v). The prisoner should be provided with the substance of that information unless doing so would itself prejudice the purpose of withholding the information. Members undertaking interviews should routinely consider whether any information in the victim's statement should reasonably be withheld from the prisoner. Where this is considered appropriate, the victim statement should be referred to a Vice-Chair of the Board who has been delegated authority by the Chair to undertake such duties. Victims can be advised that this mechanism exists, but it is important to

stress that the decision on whether information falls within the scope of Rule 6 and, if so, how to deal with the information, lies with the Board, and that victims cannot proceed on the basis that the information will not be disclosed.

22.3 Victim interview training

22.3.1 Victim interviews are an important part of the work of the Board and the very nature of the discussion can be emotionally challenging. Members should complete victim interview training before undertaking a victim interview. It is hoped that members with experience of one to one work will put themselves forward for interviewing victims. Interviews are usually face to face. Telephone interviews are offered where it is unavoidable including where the victim resides overseas. It may also be necessary to have a follow up discussion on the telephone after the completion of the report to discuss any changes to the written submission. Commonly, however, Parole Scotland staff will seek the member's approval for any changes required by the victim and then insert them into the report before it is added to the dossier.

Section 23 Confidentiality of proceedings and requests for information

Date of last review	18 March 2022
Next scheduled review	18 March 2024

23.1 Introduction

23.1.1 Rule 9 of the Parole Board (Scotland) Rules 2001 (the Rules) provides as follows:-

9. Confidentiality

Any information–

(a) in connection with the proceedings before the Board or, in a Part IV case, a tribunal in dealing with a case;

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

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

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

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

(ii) in connection with any court proceedings ; or

(iii) where the information is included in a summary published under Rule 28A.

23.2 Application

23.2.1 The issue of the confidentiality of parole proceedings was considered in the case of *Worboys (reported as The Queen on the application of DSD and NBV & Ors -v- The Parole Board of England and Wales & Ors and John Radford)* The Court concluded that the England and Wales equivalent rule to Rule 9 (Rule 25) in place at that time was *ultra vires (that is, unlawful)* However, it is important to note that Rule 25

differed from Rule 9, as it did not give the chair, or chairperson of the Board, any discretion to disclose information to those not involved in the proceedings or the public.

23.2.2 In fact, the Court commented favourably on the Scottish Rule 9, stating that "*In our judgment, the Rule [Rule 25] clearly does go too far. There is no objective necessity for a rule which stifles the provision of all information relating to the proceedings of the Parole Board, regardless of the justified public interest in any particular set of proceedings and of the fact that not all information needs to be safeguarded. These obvious propositions are vouched by a brief examination of the earlier versions of the Parole Board Rules containing discretionary language,* ***the position which currently obtains in Scotland****, the position in relation to Mental Health Review tribunals, and the view of the Chairperson of the Parole Board that greater transparency is desirable, and by implication, achievable"*

23.2.3 The introduction of Rule 28A of the Rules provides as follows:

> *28A.— Publication of decision summary*
> *(1) Where the tribunal's decision under rule 28 is a decision to direct that a prisoner is released, the tribunal must publish, in such manner as it may determine, a summary of the reasons for that decision.*
> *(2) Where the tribunal makes a decision under rule 28 to which paragraph (1) does not apply, the tribunal may publish, in such manner as it may determine, a summary of the reasons for that decision.*
> *(3) A summary published under this rule must not include information which identifies, or could be used to identify, any person concerned in the proceedings.*
> *(4) In publishing a summary under this rule, the tribunal may withhold information about the reasons for the decision if it considers that publication of the information would be contrary to the public interest or the interests of justice.*
> *(5) Before publishing a summary under this rule, the Board must send a copy of the summary to any registered victim in relation to the case, unless the registered victim has notified the Board that they do not wish to receive a copy of the summary.*

23.2.4 The Worboys decision makes it clear that greater transparency is desirable, and in the public interest. Beyond what is provided by Rule 28A, this issue will arise if the Board receives a request for information from a victim, member of the public or representative of the media. The discretion lies with the tribunal chair in tribunal proceedings, and with the chairperson of the Board in all other cases. In tribunal cases, the chair will wish to take the views of the other members of the tribunal into account in reaching a decision on what information should be disclosed, although ultimately the decision lies with the chair.

23.2.5 In considering whether and how to exercise this discretion, the tribunal chair will wish to have regard to the following factors-

23.2.5.1 The identity of the person making the request;

23.2.5.2 The need to balance the desirability of transparency against the rights of the prisoner, victim or third party such as a social worker or other professional or a witness in the original trial, under the European Convention on Human Rights, for example Article 8 (right to private and family life) or Article 2 (right to life).

23.2.5.3 What information can and should be provided, having regard to the above.

23.2.6 Tribunal chairs should attach significant weight to the desirability of transparency, which helps maintain public confidence in the role of the Parole Board for Scotland. Chairs should also have particular regard to the interests of victims.

23.2.7 These considerations also apply to requests from victims, members of the public, politicians, representatives of the media, or the likes, to attend the tribunal. The introduction of Rule 26A of the Rules provides as follows:

26A.— Observation of hearing by victim

(1) A registered victim in relation to a case may attend a hearing under this Part for the purpose of observing proceedings if authorised to do so under this rule.

(2) The registered victim must apply in writing to the Board to be authorised to attend the hearing.

(3) An application under this rule must be made either during the period intimated to the registered victim by the Board for the purpose of making the application or, if applicable, during such extended period as may be agreed by the Board.

(4) On receipt of an application under this rule the Board must inform the parties that the application has been made, and must provide an opportunity for the parties to make representations about the application.

(5) The chairman of the tribunal may grant or refuse an application under this rule and must send the applicant and the parties a written notice of the decision which includes a statement of the reasons for the decision.

(6) A person authorised to attend a hearing under this rule may be accompanied at the hearing by one other person (or such greater number as the chairman of the tribunal may agree) for the purpose of support, and must provide the tribunal with the name and contact details of the support person or persons not later than 5 working days before the date of the hearing.

(7) Attendance at a hearing under this rule is to be by live link, unless the tribunal considers that another means of attendance is required and in the interests of justice.

(8) The tribunal may at any time exclude a person authorised under this rule, or a support person mentioned in paragraph (6), from any part of the hearing.

(9) In this rule, "live link" means any arrangement as the Board may direct by which a person authorised under this rule is able to see and hear, or hear, the proceedings while not present at the place where the case is being heard.".

23.2.8 If a tribunal chair receives a request for information or a request to attend a tribunal from a member of the public, politician or representative of the media or the likes then this MUST be intimated to the chief executive and chairperson of the Board, notwithstanding that discretion lies with the tribunal chair. This does not apply to the presence of observers for training purposes, such as social workers or SPS staff.

23.2.9 When interviewing victims, members should not offer the possibility of disclosing information, or disclose information about the prisoner, and should refer to section 22 of the guidance for the purpose of this meeting. Members must ensure that victims are aware that they now have the right to request to attend a tribunal. If a victim raises the question of whether information can be disclosed or whether they can attend a hearing then they should be advised to put a request in writing to the Parole Board.

23.2.10 If a request for further information is received in a Part III case (casework or oral hearing) then the discretion lies with the chairperson of the Board, and should be referred to them.

23.2.11 The Board has prepared separate guidance about the attendance of victims at tribunals and about what should be included in a summary minute.

Section 24 Use of interpreters and translators

Date of last review	24 November 2021
Next scheduled review	24 November 2023

24.1 Introduction

24.1.1 In some cases, the prisoner (or witnesses) may not have English as their first language. In those cases, there must be careful consideration as to whether the services of an interpreter or translator are required, having regard to the need to ensure that the Tribunal is fair.

24.1.2 An interpreter may be required during the hearing both to ensure that prisoner can understand the proceedings and questions and to ensure that the evidence of the prisoner can be understood by the Board and witnesses. A translator may be required to ensure that the minute of the meeting and other papers produced by the Board can be understood by the prisoner. Arranging for the translation of items provided in the dossier is considered to be the responsibility of Scottish Ministers. Arranging for the translation of a minute produced by the Board is the responsibility of Parole Scotland.

24.2 Procedure before and during hearings

24.2.1 If an interpreter or translator is required, Parole Scotland will arrange this through the Scottish Government's "Interpreting, translation and transcription services framework" in the Board's capacity as a Court. The framework specifies three providers of services and requires them to be used in rank order. It is important that any request for interpretation or translation is made as early as possible in preparation for a hearing.

24.2.2 It may not be immediately evident that interpretation or translation will be needed. The chair should consider:

- whether such provision has been made at earlier hearings,
- the views of the prisoner, his solicitor and SPS on the prisoner's language skills

- the complexity of the hearing
- the presence of witnesses.

The chair should be aware that prisoners may represent themselves as having a better command of English than they actually have, and the chair should, if there is doubt, instruct the provision of an interpreter. During a hearing the chair should be on the alert for evidence that the prisoner is not adequately following proceedings.

24.2.2 Parole Scotland will receive confirmation from the provider of the identity and experience of the interpreter or translator and these details should be communicated to the panel, SPS, the prisoner and their solicitor, and any witnesses.

24.2.3 It is a matter for the Chair whether to permit a solicitor to use the Board's interpreter for any pre-hearing consultation with the prisoner, although generally, this represents an efficient use of public funds, and should be permitted.

24.2.4 At the start of the hearing, the chair should make it clear to the interpreter that their duty is to the Board.

The interpreter should be asked the following question by the Chair:

"Do you promise faithfully to undertake the duties of interpreter to this tribunal/oral hearing?"

The interpreter should answer in the affirmative, and this should be noted for the minute.

24.2.5 The chair manages the interpretation process. The chair should explain to all participants that the hearing will be interpreted and emphasise the need, even more than usual, for evidence to be given in a measured way. Interpretation will be consecutive, that is, a participant will give a section of explanation or evidence, and it will then be interpreted, from or into English. It is important that evidence is given and interpreted in short sections; 30 seconds is probably a reasonable maximum for each

section, depending on complexity. Participants should understand that giving evidence for five minutes and expecting the interpreter to then give an accurate account of all that has been said is likely to lead to misinterpretation at best, or the loss of important evidence at worst. Board members should discipline themselves to follow this challenging question and answer regime.

24.2.6 The chair and members should be alert at all times to identify when understanding on either side seems to be awry, and should use non-leading confirmatory questions to ensure that understanding of a particular issue is correct. The interpreter should be encouraged to be open with the Board and to flag up as the hearing proceeds, issues of interpretation or of non-evidential comments by the prisoner.

24.2.7 At the end of the hearing participants should be asked if there are any issues of interpretation that need to be clarified or confirmed, and these should be resolved as far as possible before the hearing closes.

Section 25 Tests for release

Date of last review	9 June 2021
Next scheduled review	9 June 2023

25.1 Introduction

25.1.1 While there are specific tests set out in legislation for the release of indeterminate (life) sentence prisoners and recalled extended sentence prisoners, there are no statutory tests for other types of sentence. Where there is no defined statutory test, the Board has adopted the following test: *The Board must be satisfied that such risk as the prisoner poses can be managed safely in the community*.

25.2 Casework minute wording of tests and decisions

25.2.1 Sections of the Prisoners and Criminal Proceedings (Scotland) Act 1993 are referred to in each case.

i. **PQD or subsequent review Determinate release** (including ESPs in the custodial part) (section 1(3))

Test

The Board must be satisfied that such risk as X poses can be managed safely in the community.

Decision

The Board is satisfied on this matter and recommends release subject to the attached licence conditions.

ii. **PQD or subsequent review Determinate refusal** (including ESPs in the custodial part) (section 1(3))

Test

The Board must be satisfied that such risk as X poses can be managed safely in the community.

Decision

The Board is not satisfied on this matter and does not recommend release. The next review should take place X months from the date of consideration.

OR

There should be no further review prior to release at the Earliest Date of Liberation, for which recommended licence conditions are attached.

OR

Scottish Ministers should refer the case to the Board ten weeks prior to the Earliest Date of Liberation, for a recommendation on licence conditions.

iii. **Recalls (including Indeterminate Sentence Prisoners and Extended Sentence Prisoners (ESPs))** (section 17(1)(b)(i))

Test

The Board must be satisfied that such risk as X poses can be managed safely in the community.

Decision

The Board is not satisfied on this matter and recommends revocation of the licence and immediate recall to custody.

OR

The Board is satisfied on this matter, and recommends that no action be taken.

OR

The Board is satisfied on this matter, subject to a warning letter being issued.

iv. **Determinate re-release** (section 17(4))

Test

The Board must be satisfied that such risk as X poses can be managed safely in the community.

Decision

The Board is satisfied on this matter and directs release on licence subject to the attached licence conditions.

OR

The Board is not satisfied on this matter and does not direct release.

v. **Re-Release of ESPs in their custodial part** (section 3A(4) or section 17(3))

Test

The Board has to consider whether it is necessary for the protection of the public from serious harm that X be confined.

Decision

The Board is satisfied on this matter and does not direct release.

OR

The Board is not satisfied on this matter and directs release subject to the attached licence conditions

vi. **Licence conditions only** (section 12(3))

Test

The Board must be satisfied that recommended licence conditions are lawful, necessary and proportionate in order to manage safely such risk as X poses in the community.

Decision

The Board is satisfied on this matter, and recommends the attached licence conditions.

25.3 Tribunal minute wording of tests and decisions

25.3.1 Sections of the Prisoners and Criminal Proceedings (Scotland) Act 1993 as amended are referred to in each case.

i. **Indeterminate Sentence Prisoner Tribunals** (section 2(5))

Test

Before it can direct release the Board must be satisfied that it is no longer necessary for the protection of the public that X should be confined.

Decision

The Tribunal is not satisfied on this matter and, it does not direct release. The decision of the Tribunal is by a majority / unanimous. The next review should take place X months from the date of consideration.

OR

The Tribunal is satisfied on this matter, and directs release subject to the licence conditions previously intimated. The decision of the Tribunal is by a majority / unanimous.

ii. **Extended Sentence Prisoner Tribunals** (section 3A(4) and R (Sim) v Parole Board [2004])

Test

The Board has to consider whether it is necessary for the protection of the public from serious harm that X should be confined.

Decision

The Tribunal is satisfied on this matter and does not direct release. The decision of the Tribunal is by a majority / unanimous. The next review should take place X months from the date of consideration.

OR

The Tribunal is not satisfied on this matter, and directs release, subject to the licence conditions previously intimated.

Section 26 Compassionate release

Date of last review	9 June 2021
Next scheduled review	9 June 2023

26.1 The Board's role in compassionate release cases

26.1.1 Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 provides that-

> ***3.— Power to release prisoners on compassionate grounds.***
> *(1) The Secretary of State may at any time, if satisfied that there are compassionate grounds justifying the release of a person serving a sentence of imprisonment, release him on licence.*
> *(2) Before so releasing any long-term prisoner or any life prisoner, the Secretary of State shall consult the Parole Board unless the circumstances are such as to render consultation impracticable.*
> *(3) The release of a person under subsection (1) above shall not constitute release for the purpose of a supervised release order.*

26.1.2 It is important to note that the decision on whether to release on compassionate grounds lies with Scottish Ministers, and the Board's role is simply to provide advice, which Scottish Ministers are not required to follow.

26.1.3 It is also important to remember that the advice provided by the Board must be based on the Board's assessment of risk. It is NOT the case that the only issue to be determined is whether there are circumstances (such as terminal illness), which might constitute compassionate grounds. If the Board is satisfied that such circumstances may exist, the Board must then assess risk. In doing so, the Board should apply the same test for release that would otherwise apply to the prisoner, based on the type of sentence. The circumstances which have resulted in the referral should be taken into account in making this assessment and may be viewed as reducing risk (for example where the prisoner's illness has incapacitated them to the point where they are incapable of causing harm).

26.1.4 There may also be situations where the circumstances exacerbate the risks that the prisoner poses (for example where dementia might increase disinhibition and the prisoner’s propensity for violence). The relevance of such matters to the assessment of risk should be determined having regard to medical evidence, and the Board may require to seek the opinion of medical practitioners on the implications of the illness on the prisoner’s risk. Other professionals, such as the prison-based and community-based social workers should also provide a report and recommendation in the usual way, but it is important to ensure that they have understood that the consideration is one based on the assessment of risk.

Section 27 Terrorism cases

Date of last review	21 June 2022
Next scheduled review	21 June 2024

27.1 The Board's role in terrorism cases

27.1.1 The Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) was amended by the Terrorist Offenders (Restriction of Early Release) Act 2020 (the 2020 Act). Section 1AB of the 1993 Act introduced restricted eligibility for release on licence of terrorist prisoners. Schedule 1A of the 1993 Act details the offences which carry restricted eligibility for release on licence.

27.1.2 Section 1AB of the 1993 Act in subsection (1) defines a terrorist prisoner as a person (other than a life prisoner) who is serving a sentence of imprisonment imposed in respect of an offence within subsection (2). Subsection (2) includes offences whether committed before or after the section comes into force if-

(a) it is specified in Part 1 of Schedule 1A (offences under counter-terrorism legislation),

(b) it is specified in Part 2 of that Schedule and was determined by the court to have had a terrorist connection under section 31 or (in the case of a person sentenced in England and Wales or Northern Ireland and now subject to the provisions of this Part relating to early release) section 30 of the Counter-Terrorism Act 2008 (sentences for certain offences with a terrorist connection), or

(c) it is a service offence as respects which the corresponding civil offence is an offence specified in Part 2 of that Schedule and was determined by the service court to have had a terrorist connection under section 32 of that Act (sentences for certain offences with a terrorist connection: armed forces).

27.1.3 Cases of both short-term and long-term prisoners will be referred to the Board by Scottish Ministers when the prisoner has served two-thirds of their sentence. This means that for relevant short-term prisoners there will be no automatic unconditional release at the halfway point of the sentence. For some short-term prisoners release

will be with licence conditions while with others release will be unconditional. Further details are provided in the paragraphs below.

27.2 Terrorism cases – test for release

27.2.1 The test to be applied by the Board in terrorism cases is that before it can recommend release, the Board must be satisfied that it is no longer necessary for the protection of the public that the terrorist prisoner should be confined.

27.3 Terrorism cases – long-term sentence prisoners

27.3.1 For relevant long-term sentence prisoners there will be no consideration for parole at the halfway point of their sentence. Where there has been a previous referral of the case by Scottish Ministers and the Board did not recommend release, there should be a further referral by Scottish Ministers no later than two years after the Board’s recommendation. The Board retains the discretion to set a shorter review period if it considers that to be appropriate. The provisions in section 1(2A) of the 1993 Act where long-term prisoners who have not been released on parole are released on licence six months before the sentence end date do not apply in terrorism cases.

27.4 Terrorism cases – short-term sentence prisoners with a supervised release order

27.4.1 For such short-term sentence prisoners release can only be through a recommendation by the Board. Where the Board does recommend release and a supervised release order is in place, the Board is not required to recommend licence conditions. This is as defined in section 8(3) of the 2020 Act.

27.5 Terrorism cases – short-term sentence prisoners without a supervised release order

27.5.1 For such short-term sentence prisoners release can only be through a recommendation by the Board. Where the Board does recommend release and a supervised release order is not in place, the Board is required to recommend licence conditions. This is as defined in section 1AB(4) of the 1993 Act.

27.6 Terrorism cases – children and young people's cases

27.6.1 The restricted eligibility for release on licence also applies in children and young people's cases.

27.7 Terrorism cases – persons liable to removal from the UK (deportation cases)

27.7.1 Section 9 of the 1993 Act has been amended so that in relevant cases release can only be through a recommendation by the Board.

Section 28 Preliminary hearings

Date of last review	15 September 2020
Next scheduled review	15 September 2022

28.1 Introduction

28.1.1 Rule 19 of the Parole Board (Scotland) Rules 2001 (the Rules) allows for a preliminary hearing (PH) in tribunal cases where necessary. Although not specified in the Rules, a PH can be held in oral hearing (OH) cases. The power to decide that a PH should be held lies with the chair of the tribunal or OH. It is for the chair of the tribunal or OH to decide who should attend the PH but ordinarily the chair would sit without other members and both parties and their representatives may attend. In cases where there are particular complexities or sensitivities, the chair may consider that the full Panel should sit at the preliminary hearing. It may be appropriate to convene the preliminary hearing without requiring the attendance of the prisoner, although the views of their legal representative should be taken before doing so. The other parts of Rule 19 of the Rules as they apply to PHs for tribunals should be read across to OHs.

28.2 Reasons to hold a PH

28.2.1 While not specified in the Rules, a PH should be held where it is necessary to assist the progress of the case prior to a tribunal or OH. Normally this will be for more complex cases where a discussion may be necessary with the prisoner's or patient's solicitor or with other professionals to assist the management of the case. The purpose of the preliminary hearing is to resolve any issues which would prevent a tribunal or OH reaching a decision, and/or to identify issues and how they should be addressed at the tribunal or OH. A PH should not be held where it would possible to achieve the same result through correspondence.

28.2.2 The need for a PH can arise in different situations. For example, it may be apparent when adjourning a tribunal or OH that certain matters may be best addressed through a PH prior to the case coming back to a full hearing. Alternatively,

it may be that the need for a PH is identified at a casework meeting. It may be relevant to hold a preliminary hearing where there are concerns that a scheduled tribunal or OH may not be able to proceed AND it appears to be necessary to discuss relevant matters with the prisoner or patient and/or their solicitor and with other professionals involved in the prisoner's or patient's case beforehand. It will normally be the case that at the very least, the prisoner's or patient's solicitor will be in attendance. Where no solicitor has been engaged, the prisoner or patient would normally be in attendance.

28.3 Examples where a PH may be necessary

28.3.1 The circumstances in which a PH may be set are not exhaustive and may include:

- Cases where there is a need for the chair to issue directions for the attendance of witnesses or the production of documents to ensure that a tribunal or OH will be in a position to proceed AND there is a need to clarify which party is to take the necessary action and in what timescale
- Cases where the responsibility of particular parties requires to be clarified in advance of the tribunal or OH, such as the identification of the responsible local authority
- Cases where because of the complexity of issues involved or for some other reason it may make sense to hold a PH for the purposes of ensuring that actions are being taken in a sufficiently timely way to avoid unnecessary delays
- Cases where it may be necessary to consider issues regarding the capacity of the prisoner or patient to instruct a solicitor or to fully participate in a tribunal or OH

Section 29 Potential for prisoners to incriminate themselves

Date of last review	15 September 2020
Next scheduled review	15 September 2022

29.1 Introduction

29.1.1 The Board has a well-established approach in cases where a prisoner is facing criminal charges or may be facing criminal charges. This is that they will be warned that they are not required to say anything that might result in them incriminating themselves. However, some recent tribunal experience has served to highlight that despite a warning being issued, a prisoner may divulge information that could be considered to incriminate themselves in a criminal matter. This guidance reflects a review of the well-established approach with some additions.

29.2 Procedure for tribunals and oral hearings

29.2.1 Where it is known that a prisoner is facing criminal charges or may be about to face criminal charges, the prisoner will be warned that they are not required to say anything about such matters at the outset of the hearing. In addition, the prisoner's solicitor should be warned that the Board does not expect the prisoner to say anything that may result in them incriminating themselves. These warnings should include that in such a situation the Board will be required to report the information to the Crown Office. The hearing should ensure that it uses the standard wording as in a police caution - the prisoner does not have to say anything but anything he/she does say will be noted and may be used as evidence against him/her in any subsequent criminal prosecution.

29.2.2 Where despite such a warning being issued to the prisoner and their solicitor, the prisoner does begin to provide information that might result in them incriminating themselves, it will be for the chair of the hearing to interject and repeat the warning. It may also be appropriate for the chair to offer the opportunity of a short adjournment where the prisoner and their solicitor can discuss the matter.

29.2.3 In the event that it appears to the Board that despite the warning, a prisoner has provided incriminating information then the Board would be required to pass such information in an appropriate way to the Crown Office. Indeed rule 9(c)(ii) of the Parole Board (Scotland) Rules 2001 makes it clear that there may be situations where the Board may need to divulge such information despite the general approach of keeping matters confidential. It should be made clear that if the prisoner decides that he wishes to provide information about outstanding criminal matters despite being warned against doing so, it his decision, and indeed he may want to do so in order to persuade a panel of the board to direct his re-release.

29.2.4 Any situation where it might be necessary to pass such information to the Crown Office should be referred in the first instance to the Chairperson of the Board. It should be noted that the hearing chair and members may be required to attend court to give evidence in such cases. As such, it is particularly important that all members of the tribunal or oral hearing take full notes of the procedure followed and warnings issued. In the event that members are required to give evidence at court then good, accurate and complete notes are very helpful and may even remove the need to give evidence in person.

29.2.5 This guidance shall apply irrespective of the point in proceedings where the potential for prosecution becomes known.

Section 30 Cases where the prisoner is liable to deportation

Date of last review	15 September 2020
Next scheduled review	15 September 2022

30.1 Introduction

30.1.1 In cases considered under Part III of the Parole Board (Scotland) Rules 2001 where a prisoner was liable to deportation, the position had been that the Board provided advice to Scottish Ministers on release, and that Scottish Ministers were not bound to accept that advice. That was changed by section 54 of the Management of Offenders Act 2019, which made the Board's recommendation binding on Scottish Ministers. This section came into effect on 1 October 2020 and amended relevant parts of sections 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

30.2 Consideration of release

30.2.1 Casework meetings, oral hearings and tribunals require to consider risk to communities both in the UK and in the country to which the offender might be deported. In the case of *R v Parole Board for England and Wales Ex Parte White, decided by the Divisional Court on 16 December 1994*, a discretionary life prisoner convicted of manslaughter, applied for judicial review of the Parole Board's decision that he should continue to be imprisoned for the protection of the public, despite his tariff being completed,.

30.2.2 On behalf of the prisoner, it was argued that "the public" was only the public within the UK, and as a deportation order had been made against him he would be deported on release and therefore be of no danger to the public.

30.2.3 The Court dismissed the application holding that there was nothing in the Criminal Justice Act 1991 s.34(4)(b) which showed that Parliament wished the responsibility of the Parole Board to be confined to the public within the UK, and the

Board's responsibility encompassed anyone to whom the prisoner might pose a threat, regardless of whether or not they were in the UK.

30.2.4 The test for release is exactly the same as the test applied by the Board where there is no issue regarding deportation.

30.2.5 There are particular complexities which arise in cases where the prisoner is liable to deportation. Rule 134 of The Prisons and Young Offenders Institutions (Scotland) Rules 2011 prohibits prisoners who are subject to proceedings under the Extradition Act 2003 from temporary release by way of unescorted day releases or home leaves. It is possible for such prisoners to undertake special escorted leaves, although SPS has tended not to permit them.

30.2.6 This can lead to a situation where a prisoner does not have the opportunity for testing which would be afforded to prisoners who are not liable to deportation. It must be stressed that this is a matter for the prisoner and SPS. The Board’s role is to make a decision on release by applying the relevant test, and if the absence of evidence means that the test for release is not satisfied then the Board’s decision must be not to release.

30.2.7 The Board must also approach matters on the basis of the information known to it at the time of reaching the decision. The Board is unlikely to have the expertise to predict what may happen in relation to deportation proceedings, and it should take care not to speculate.

30.2.8 It may be necessary to have information about how a prisoner is to be supervised abroad, and whether his risk can be safely managed in the place to which he will be released, when consideration is being given to recommending or directing release. It should be borne in mind that there may be no possibility of recall should the offender become a risk abroad. The Board should consider this guidance in conjunction with the guidance on supervising prisoners abroad, which can be found in Section 21 of this document.

30.3 Tests for release

30.3.1 In all cases, Tribunal and non-tribunal, recommendations and directions should be made in accordance with the normal tests and rules which apply including any risks which may be posed to communities both in the UK and beyond, any management plans which may be in place in the UK and beyond and any recall difficulties.

30.4 Licence conditions

30.4.1 So far as recommended licence conditions are concerned, they should be set as for any other case. It is a matter for SPS to liaise with the deportation authorities on the matter of release or to continue detention under some authority other than the warrant of commitment for the index offence.

30.4.2 There is no need for the Board to look at conditions requiring the prisoner to report to an officer of the deportation authority or to comply with that officer's requirements. Those matters are for Scottish Ministers, SPS and the deportation authorities to resolve among themselves.

30.4.3 The Board should not involve itself in the practicalities of release or continued detention nor should it attempt to, somehow, assist the deportation authorities with inventive licence conditions. The whole issue of deportation should be left to them.

30.5 Additional issues

30.5.1 Importantly, panels of the Board are likely to want to have information about the deportation process, the place to which the prisoner will be deported and management plans abroad and if, or how, they will lead to safe management of the risk posed by the prisoner in the place to which he is to be deported and be fully aware that recall may not be possible, when considering release.

Section 31 Early intimation of decisions

Date of last review	15 September 2020
Next scheduled review	15 September 2022

31.1 Introduction

31.1.1 Early intimation of decisions are of benefit to prisoners, victims, and agencies who may have to make arrangements in relation to the supervision of prisoners in the community if released.

31.1.2 There are three style decision intimations, covering Life Tribunals, Extended Sentence Tribunals and Oral Hearings, and providing for release, no release and adjournment. These can be found in the portal. The decision intimations use text insert boxes and drop-down boxes to allow them to be completed quickly and easily.

31.1.3 The procedure is as follows:

- Following the Tribunal or Oral Hearing, the appropriate form should be completed as soon as the decision is reached, and emailed to Parole Scotland.
- Where issues with internet access are experienced, the Chair must ensure that the intimation is sent to Parole Scotland on the same day that the decision is reached.

Section 32 The operation of Rule 6

Date of last review	11 March 2021
Next scheduled review	11 March 2023

32.1 General principles

32.1.1 The Parole Board for Scotland is a judicial body created by statute. Its role is to make decisions on whether those serving sentences may serve the remainder of their sentence in the community, subject to licence conditions and under the supervision of a social worker. It sits as a Court for the purposes of making such decisions. The Board makes decisions based on the application of the appropriate test for release or recall, depending on the type of sentence. All of the release or recall tests applied by the Board are based on the Board's assessment of the risk presented by the prisoner. The Board must have regard to fairness and the need for public protection.

32.1.2 The Board must consider all information which may be relevant to its assessment of the risk posed by the offender, and whether these can be managed in the community. It is a matter for the Board how much weight to attach to this information in reaching its decision. The Board is not constrained by the fact that information has not resulted in a criminal conviction, although this may affect the weight attached to the information.

32.1.3 The Board requires any and all information in the possession of other public bodies which might be relevant to risk. It is then a matter for the Board to decide how to treat that information. The Board's responsibility as a Court includes the need to act fairly and in accordance with the European Convention on Human Rights. It will have regard to fairness, the rights of victims and information providers, and public protection in deciding how to treat the information

32.2 Legal principles

32.2.1 The Board requires to ensure that its proceedings are fair. Generally, the requirement for fairness will include a requirement that the offender is provided with all information available to the Board in reaching its decision, in order that they can address this information, either by challenging it, or providing their position in relation to it. This is provided for in Rule 5 of the Parole Board (Scotland) Rules 2001 ("the 2001 Rules"), and reflects common law and ECHR principles of fairness.

32.2.2 However, there can be cases where it would be contrary to the public interest to disclose information which is significant in assessing risk and applying the tests for release. Examples of this might include police intelligence in relation to an ongoing investigation, or information which might lead individuals to be vulnerable to retaliation. Rule 6 of the 2001 Rules is designed to deal with such situations. It states:

Non disclosure of information

***6.**–(1) This rule applies where–*

(a) the Scottish Ministers consider that any written information or document contained in a dossier sent to the Board under rule 5 or otherwise given to the Board by them; or

(b) the Board considers that any other written information or document obtained by it,

should not be sent or disclosed to the person concerned because its disclosure would be likely to be damaging on one or more of the following grounds, namely:–

(i) that it would be likely adversely to affect the health, welfare or safety of that person or any other person;

(ii) that it would be likely to result in the commission of an offence;

(iii) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;

(iv) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;

(v) that it would be likely otherwise to damage the public interest;

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

(2) Where this rule applies–

(a) the Scottish Ministers or, as the case may be, the Board shall not be required to send a copy of the damaging information to the person concerned whether under rule 5 or otherwise;

(b) the Board may take such damaging information into account even although it has not been disclosed to the person concerned; and

(c) the Scottish Ministers or, as the case may be, the Board shall send to the person concerned a written notice–

(i) informing him or her that certain information which has been sent to or obtained by the Board has not been sent to him or her because the Scottish Ministers or, as the case may be, the Board considers that the disclosure of that information would be likely to be damaging on one or more of the grounds mentioned in paragraph (1) which is or are specified in the notice;

(ii) giving that person, but only so far as is practicable without prejudicing the purposes for which the information is not disclosed, the substance of the damaging information,

and, where this rule applies by virtue of paragraph (1)(a) above, the Scottish Ministers shall send a copy of that written notice to the chairman of the Board.

32.2.3 It can be seen that the information can be deemed to fall under Rule 6 either by Scottish Ministers, or by the Board itself. The Board's power to do so lies with the Chair of the Board, and is currently delegated to the Legal Vice-Chair. Where such information is present, the offender requires to be notified of this fact, and provided with the "substance" of it (i.e. as much information about it as can be safely disclosed)

unless disclosing the substance would prejudice the purposes for which the information is not disclosed.

32.3 Historical position

32.3.1 The majority of Rule 6 information has been designated as such by Scottish Ministers. The Board had taken the view that, where Scottish Ministers had designated information as falling under Rule 6, it did not have discretion to take a different view. However, the Board's role as a Court, and Scottish Ministers' own position on Rule 6, have changed the position and it is now the Board's view that it is a matter for the Board how to treat such information, including whether to disclose part or all of it to the offender, their legal representative or any other relevant person, irrespective of how it has been submitted.

32.3.2 This judgement will be amongst the most anxious which Board Members will be asked to make. On one hand, the Board must have regard to the requirement for fairness to the offender. On the other hand, the Board must have regard to the interests of the public, and of informants. Where these are irreconcilable, the Board should give precedence to the interests of the public and the informant.

32.4 Suggested approach

32.4.1 The first issues which the Tribunal/panel may wish to determine are:

a) Is the information significant, that is, does it impact on the Board's assessment of risk, and its application of the tests for release?

b) If it is significant, does the Board require to attach weight to it? There may be cases where, although the information is significant, there is enough disclosed information within the dossier or from evidence provided at a hearing to allow the Board to reach a conclusion without attaching weight to the Rule 6 information.

32.4.2 It can be seen that it will be difficult to reach a view on these issues (particularly whether it is necessary to attach weight to the information), without considering the other evidence in the dossier or evidence provided at a hearing, and giving the offender the opportunity to explore and address that information.

32.4.3 In a Tribunal or oral hearing, it is suggested that the Chair should raise the fact that the Board has received the Rule 6 information as a preliminary matter. They should advise the offender and their legal representative that the Tribunal/panel will reach a decision on whether it may be necessary to attach weight to the information at the end of the hearing, and that further procedure will depend on that decision. Thereafter, the hearing should proceed in the usual way, subject to the fact that the Chair must ensure that nothing is done which might allow the offender to discern the nature or substance of the Rule 6 information (beyond that which has been disclosed to them in advance or is otherwise available in the dossier).

32.4.4 At the end of this part of the hearing, the Tribunal/panel should adjourn in order to consider whether it may be necessary to attach weight to the Rule 6 information. Parties should remain available to be advised of this decision on the day.

32.4.5 Where the information is not significant, it follows that no further action is required, and the hearing should reconvene to advise the offender and their legal representative of this, and then reach a decision in the normal way. The decision minute should reflect that the Tribunal/panel did not consider that the information was significant.

32.4.6 Where the information is significant, but the Tribunal/panel does not require to attach weight to it in reaching a decision (e.g. where there is sufficient other evidence against release within the dossier or provided at the hearing) then the Tribunal/panel should reconvene to advise the offender and their legal representative of this, and then reach a decision in the normal way, It is important that the decision minute states both that the information was significant, and that the Tribunal/panel did not require to attach weight to it.

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32.4.7 In casework meetings, the Members should discuss the significance of the information, and whether it may be necessary to attach weight to it. If it is not significant, then the decision can be reached in the usual way. If the information is significant, but the Members have not required to attach weight to it, then this should be clearly recorded in the minute.

32.5 Position where the Board may require to attach weight to the Rule 6 information

32.5.1 Where this is the case, the Tribunal/panel should intimate this to the offender and their legal representative on the day of the hearing. The offender and their legal representative should have the opportunity to make submissions on how to proceed thereafter. It will usually be necessary to adjourn to a further evidential hearing. In casework meetings, this would be facilitated by fixing an oral hearing. In either case, the Tribunal/panel should identify the most appropriate witness who can speak to the reason why the information should not be disclosed, and if required, to the substance of the information itself, and they should be cited to attend the adjourned hearing.

32.6 Procedure at Tribunal or oral hearing on Rule 6 matters

32.6.1 The hearing should be convened outwith the presence of the offender and their legal representative. The Tribunal/panel should then take evidence on the reasons why the information should not be disclosed to the offender, and also, if necessary, on the information itself.

32.6.2 In relation to whether the information should be disclosed to the offender and their legal representative, the Tribunal/panel may wish to take evidence on whether it is possible to disclose all or part of the information in a way which does not prejudice the purposes for which the information is not disclosed. It should also take any evidence which is relevant to whether the reasons for not disclosing the information fall within the criteria set out in Rule 6(b) (i) to (v). In relevant cases, the Tribunal/panel may wish to take evidence on whether it is possible to provide the substance of the damaging information to the offender or further information on the substance if that has already been provided.

32.6.3 The Tribunal/panel should also use this opportunity to ask any questions it has about the information itself. However, any such questions should only go as far as appears to be necessary to reach a decision in due course.

32.6.4 The Tribunal/panel may also wish to ask the witness whether whole or part of the information should be provided to someone other than the offender, such as the prison-based or community-based social workers. Provision of such information to social workers is likely to inform any opinions on release.

32.6.5 After the Tribunal/panel has concluded its questioning of the witness, the offender and/or their legal representative should join the proceedings. Thereafter, the offender's legal representative should ask any questions which they have around the fact that the information has not been disclosed. The questioning must not stray into matters relating to the information itself.

32.6.6 After hearing this evidence, the Tribunal/panel should hear submissions from the offender or their legal representative. Thereafter, the Tribunal/panel should adjourn to decide how to treat the Rule 6 information. In doing so, it should have regard to the interests of justice and fairness, to the offender, the informant, and the public.

32.6.7 The Tribunal/panel may decide:

a) that having considered all of the evidence, it is not necessary to attach weight to the Rule 6 information. In this case, this should recorded in the decision, along with whether the information was significant.

b) that it is necessary in the interests of justice and fairness to appoint a special advocate (see below).

c) that the Rule 6 information should not be disclosed, but should be taken into account in reaching a decision. This should be clearly recorded in the decision.

d) that the information should be disclosed, in whole or in part, to another person, such as a social worker. This can be done in terms of Rule 9 of the 2001 Rules, which allows the Chair of the Tribunal (or in the case of a part III case, the Chair of the Board) to waive the general requirement for confidentiality. In such a case, the Tribunal/panel should frame the information to be provided to that person, together with a clear requirement as to whether the information can be shared with any other specified person. A panel of the Board (in a Part III case) will need to refer the case to the Chair of the Board or nominated deputy for a decision on waiving the general requirement for confidentiality and will likely require to adjourn proceedings to achieve this. The Tribunal/panel should then take the views of the person who is being provided with the information, either through an updated report, or through taking evidence from them. The Tribunal/panel will need to consider whether any such report can be provided to the offender or their legal representative, or whether they can attend any evidence gathering session, having regard to the need not to prejudice the Tribunal/panel's decision on whether the information can be disclosed to the offender and their legal representative.

e) to disclose all, or part of the information or the substance to the offender and/or their legal representative. It may be that the Tribunal/panel requires to consider whether to appoint a special advocate before reaching this decision. If this is the case, the Tribunal/panel should advise the information provider of the decision, and the reasons for it. It should then frame the information to be disclosed in accordance with its decision. This should be provided to the offender and their legal representative, and a further hearing fixed for them to make any representations on the information. The Tribunal/panel should then reach a decision in the case. It is very important that each step is recorded in the decision, and that the decision is framed so that it does not disclose any information which the Tribunal/panel had decided should not be disclosed.

32.7 Appointment of a special advocate

32.7.1 The Tribunal/panel may appoint a special advocate if it has concluded that the damaging information will be given weight and that fairness requires that it be tested by a special advocate.

32.7.2 Members should have regard to the decision of the outer house of the Court of Session in the case of O'Leary v The Parole Board for Scotland (see Portal). That was a case where there was significant Rule 6 information. In the course of the Tribunal there was discussion about the appointment of a special advocate. The Tribunal decided not to do so, but did not provide reasons for that decision. In his decision, Lord Sandison acknowledged that the Board was entitled to withhold Rule 6 information from the prisoner. However, he did not accept that the Board was only required to consider procedural fairness if it was the subject of complaint on behalf of the prisoner, and was of the view that *"…the provision and maintenance of procedural fairness is first and foremost the responsibility of the body whose procedures are in question…"*. He suggested that the process which should be adopted in terms of the Rule 6 information would depend on the importance of the information. Where liberty is at stake, the highest standards of procedural fairness were required. In considering the Board's decision regarding the appointment of a special advocate, Lord Sandison said that-

> "*While it is true that the Tribunal had before it weighty considerations, quite independent of the withheld intelligence information, which might well have led it in any event to the same conclusion which it reached with that information, I consider that the parties were correct in their position before me that, so long as the appointment of a special advocate might have made a difference to Mr O'Leary's position, even if only to the extent of making a reasonable perception of the fairness of proceedings more favourable than it otherwise might have been, the requisite highest standards were not reached*."

32.7.3 It is clear from this decision that where the information is significant and the Tribunal might attach weight to it, the Tribunal is obliged to consider whether the appointment of a special advocate might remove or mitigate any unfairness arising

from the fact that the prisoner had not received the information, irrespective of whether this is raised by the prisoner or their representative. If the Tribunal decides that a special advocate is not required, it should minute reasons for this decision.

32.7.4 If there is any doubt at all, a special advocate should be appointed.

32.7.5 The role of a special advocate is to test, by examination of evidence, if the case for non-disclosure of material is made out, and the weight which should be placed on the damaging information. This role must be carried out without taking any instructions from any party to the proceedings on any aspect of the damaging information. The special advocate may communicate with the offender and their legal representative after they have been provided with the dossier, but before they have been provided with the Rule 6 information. The special advocate is prohibited from initiating any communication with the offender, or their legal representative, once the Rule 6 information is served upon them.

32.7.6 A person appointed as a special advocate is not responsible to the offender or their legal representative

32.7.7 If a direction to appoint a special advocate is made, the Board must serve the material on the special advocate as soon as is practicable.

32.7.8 The primary role of the special advocate is to seek to challenge the classification of some or all of the evidence classified as damaging information in terms of Rule 6 of the Parole Board Rules and to submit representations as to whether the Board should place any reliance upon the evidence. Part of the function of a special advocate is to ensure that the damaging information is subject to independent scrutiny and adversarial challenge - including making submissions (in closed session) on whether or not the Rule 6 information should in fact be disclosed to the offender and their legal representative.

32.8 Proceedings where a special advocate is appointed

32.8.1 A special advocate is likely to be a legally qualified person who holds special advocate status, having undergone an enhanced security clearance and been appointed by the Advocate General under the Terrorism Prevention and Investigation Measures Act 2011.

32.8.2 Where the appointment of a special advocate is necessary, the Board will draw up a list of those eligible and available to undertake the role. The offender and/or their legal representative will have the opportunity to select someone from this list.

32.8.3 The fee for the appointment of a special advocate will be met by the Board.

32.8.4 Once a special advocate is appointed, there will be a demarcation between the "open" and "closed" stages of the hearing. The hearing will comprise of two parts:

a) an open session, during which the offender's legal representative may make representations on their behalf and cross examine any witnesses called before the Board on the condition that any questions asked, and any answers provided, are not in breach of Rule 6; and

b) a closed session, during which submissions can be made regarding the Rule 6 information in the absence of the offender and their legal representative but in the presence of the special advocate.

32.8.5 The special advocate will be permitted to attend all parts of the hearing (open and closed session) and sees all of the material - including the damaging information not disclosed to the offender or their legal representative in terms of Rule 6. The special advocate would only become involved after a decision is taken that the damaging information is such that weight should be applied to it and fairness requires a special advocate, so they would not be involved in the prior procedure. They would be provided with minutes of these hearings, including those which took place outwith the presence of the offender and/or their legal representative.

32.8.6 The Tribunal/panel may elect not to disclose the evidence. If the decision is taken not to place any reliance upon the evidence that will be an end of the matter and the damaging evidence will no longer be an issue.

32.9 Decision Minute

32.9.1 Where the Tribunal/Panel has placed weight on Rule 6 information, the decision minute must not disclose the damaging information to the offender. This may necessitate the production of two minutes - one for the offender and a confidential one relating to the damaging information and the weight placed on it as well as any special advocate submissions and the reasons for not disclosing. This would be available only to the Judge in any Judicial Review.