

# PAROLE BOARD FOR SCOTLAND



## GUIDANCE FOR MEMBERS

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## Section 1 Introduction

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 1.1 Purposes of the Guidance

1.1.1 The Parole Board for Scotland Guidance for Members (the Guidance) 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 This guidance also takes into account the changes in procedure introduced by the Parole Board (Scotland) Rules 2022 (the Rules) which came into force on 1 April 2023. Although rule 1(2) states that the Rules apply to every case referred to the Board on or after 1 April 2023, it should be noted that the effect of rule 35(2) is that the new rules apply to any case in which a decision had not been made before 1 April 2023. Anything previously done in the case under the 2001 Rules is to be treated as if it was done under the 2022 Rules (rule 35(3)(a)). However, if it is necessary in the interests of justice, the Board may vary any requirements of the 2022 Rules or determine that a case should continue to be dealt with under the 2001 Rules (rule 35(3)(b)). In cases

where the Board applies rule 35(3)(b) then this must be recorded in the decision minute (rule 35(4)).

1.2.4 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.



## Section 2 Origins and objectives of parole

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 2.1 The introduction and development of a parole system: the Parole Board for Scotland

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](#). In 1968 a system of parole was superimposed on the existing remission system by virtue of the Criminal Justice Act 1967 Pt III. The Parole Board for Scotland was constituted by section 59(1) and Schedule 2 of the Criminal Justice Act 1967 and has been in existence for more than 50 years. The Board's role was to advise the Secretary of State for Scotland on the early release on licence and recall of prisoners in terms of that Act. This was a paper exercise. 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.

2.1.2 In 1988 the Carlisle Committee carried out a 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" (that is increasing the period in custody before parole could be considered from 1/3<sup>rd</sup> of the sentence to the halfway point), better facilities for preparing prisoners for release, and increased resources for supervision and monitoring after release. A similar review of the Scottish system was carried out by a committee under the chairmanship of Lord Kincaig and a report "Parole and Related

Issues in Scotland" was published in 1989. The Prisoners and Criminal Proceedings (Scotland) Act 1993 (the "1993 Act" implemented the Government's conclusions after consideration of the Kincaid Report. The effective date of implementation was 1 October 1993. Section 20(1) of the 1993 Act provided that there should continue to be a body known as the Parole Board for Scotland to discharge the functions set out in the 1993 Act.

## **2.2 A vision of parole**

2.2.1 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.

## **2.3 The current approach**

2.3.1 Since the 1993 Act came into force more than 10 statutes have impacted directly on the Board's functions and roles. The Board has a number of statutory functions, largely set out under the 1993 Act and the Management of Offenders etc. (Scotland) Act 2005. A significant watershed was the Convention Rights (Compliance) (Scotland) Act 2001 (the 2001 Act). Until then the Board carried out an advisory role as a paper exercise. In effect, the Board became a decision-making body and the Scottish Ministers/executive were/was required to give effect to its decisions rather than viewing them as recommendations which could be accepted or rejected. The 2001 Act amended the 1993 Act and radically altered the system of parole in Scotland.

2.3.2 Part 1 of the 2001 Act introduced new release arrangements for life prisoners, augmented the role of the Board and ensured compliance with certain decisions of the European Court of Human Rights (“ECtHR”).

2.3.3 Part 2 of the 2001 Act reformed the constitution of the Board, created rule-making powers and established a system of tribunals and security of tenure of Board members that was compliant with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The Parole Board (Scotland) Rules 2001 (SSI 2001/315 - the 2001 Rules) make provision with respect to the proceedings of the Board.

2.3.4 The Board was reformed into a Tribunal Non-departmental Public Body, which is an independent, judicial body the members of which hold judicial office independent of Scottish Ministers and which acts as a Court.

2.3.5 Like Parole Boards and their equivalents in New Zealand, Australia, South Africa, the United States, Canada, Jersey, Guernsey, the Isle of Man, Northern Ireland, Ireland, England and Wales, and most members of the Council of Europe, the Board is independent of the country’s court system.

2.3.6 Scottish Ministers have confirmed that they consider that the Board and panels of the Board operate as courts for the purposes of Articles 5(4) and 6(1) of the European Convention on Human Rights. They are not “courts” in the conventional sense of bodies which adjudicate between parties who are in dispute or preside over criminal trials or civil proofs. Nevertheless, their role is at least partly inquisitorial in nature. It is not the responsibility of the Board to consider questions of punishment and general deterrence. These issues are matters for the sentencing court.

2.3.7 The Board and oral hearings of the Board are not “courts” for any of the purposes of the Judiciary and Courts (Scotland) Act 2008 (the 2008 Act) and in particular are not listed as a court in Section 2 of the Act “Head of the Scottish Judiciary”, subsection (6). However, appointments to the Board are overseen by the Judicial Appointments Board for Scotland as set out in section 10(1)(fzc) of the 2008 Act.

2.3.8 The Board only grants release in cases where the level and nature of risk is manageable; this decision is informed by the evaluation of risk. The Board's main aim is to ensure that the risk posed by a prisoner, if released, can be safely managed in the community. If released, the prisoner will serve the remainder of their sentence in the community under the supervision of a social worker, and subject to consideration of recall to custody if the licence conditions are breached.

## **2.4 The Scottish Prison Service**

2.4.1 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. 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.

## **2.5 The Risk Management Authority**

2.5.1 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). The RMA has developed the Framework for Risk Assessment, Management and Evaluation (FRAME) which outlines the agreed policy approach between justice agencies in Scotland to risk assessment and risk management. Four core elements that make up the framework: the foundations, the guidance principles, the language of risk and the practice standards. The [portal](#) contains a link to FRAME.

2.5.2 When a court is considering an OLR sentence, Risk Assessment Reports (RAR) are prepared by the RMA's Accredited Assessors, working to agreed standards. The RMA evaluates every RAR produced.

2.5.3 When an OLR is imposed, the individual will be subject to a Risk Management Plan (RMP) approved by the RMA for the rest of their life. The RMP is prepared by the 'lead authority' responsible for the individual. The lead authority may be the Scottish Prison Service on behalf of Scottish Ministers, NHS or social work services. The lead authority keeps records of how they are implementing the plan and submits these Annual Implementation Reports (AIR) to the RMA for evaluation.

## **2.6 Social work services**

2.6.1 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.

2.6.2 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.

## **2.7 Police Scotland**

2.7.1 Police Scotland (officially the Police Service of Scotland) was established on 1 April 2013 and is the second largest force in the UK after the Metropolitan Police. It

took over the responsibilities of seven regional police forces and several national specialist units.

2.7.2 Police Scotland and its predecessors are at the heart of the Board's work. The police force identifies criminality and provides evidence to COPFS to enable appropriate prosecution to take place. Although most of the work of Police Scotland is at arm's length from the work of the Board there are a number of areas where members depend upon police information and evidence:

- i. Information relating to the index offence which has not been included in the dossier, but appears to the panel to be relevant to the consideration of risk,
- ii. Investigations which are pending when a casework meeting or oral hearing is scheduled; these investigations may relate to events within custody or to behaviour in the community before or after the index offence,
- iii. Information provided to the Scottish Ministers or to a supervising officer suggesting a prisoner on licence has breached their licence conditions,
- iv. Information stemming from the role of the police in supervising, jointly, prisoners subject to a Sexual Offences Prevention Order,
- v. Information relating to the supervision of a prisoner subject to Multi-Agency Public Protection Arrangements (MAPPA),
- vi. Information relating to victims of the index offence and how their interests can best be managed.

2.7.3 The Board may also seek and receive information from the other UK police forces.

## **2.8 The Crown Office and Procurator Fiscal Service (COPFS)**

2.8.1 The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's public prosecution service and death investigation authority. When a crime is reported, the police or other reporting agency carry out an initial investigation and if there is enough evidence, a report may be submitted to COPFS for consideration. A procurator fiscal (PF), will assess the evidence and decide what action to take, if any, in the public interest. If the PF decides that court proceedings are appropriate, they will decide what

court should deal with the case. The PF will prepare the indictment which sets out the charges which the accused will face and will agree any amendments to the indictment before or during the proceedings. As with Police Scotland most of the work of COPFS is usually at arm's length from that of the Board but there are a number of issues which may result in a panel seeking clarification or additional information from COPFS:

- i. Confirmation of action, if any, being taken in relation to reports of offences in-custody which may have been subject to SPS action,
- ii. Clarification of the action being taken in relation to a pending case and the likely timescale for proceedings (note that there is sometimes confusion over case numbering and that the SCRO record is often not a good guide),
- iii. Information on charges dropped from indictments (although the accused may not have been found guilty the context of the charges may be relevant to the consideration of risk)

## **2.9 The Scottish Ministers / Scottish Government Justice Directorate**

2.9.1 “The Scottish Ministers” is the term used to denote the Scottish Government, particularly in relation to the terms of the Parole Board (Scotland) Rules 2022 (the Rules), and elsewhere. The functions of the Scottish Ministers in relation to parole matters is normally carried out by officials of the Justice Directorate.

## Section 3 The current approach

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 3.1 The role of the Board

3.1.1 The Board can only consider cases referred to it by Scottish Ministers who are, in terms of the Rules, a party to all cases referred by them to the Board; the “person concerned” is the other party.

3.1.2 The Board only grants release in cases where the level and nature of risk is manageable. This decision is informed by oral or written evidence in the form of witness evidence and, usually, reports contained in the Scottish Ministers’ dossiers as set out in rule 5. The content of the dossier referred to the Board by Scottish Ministers includes, as far as practicable and relevant, the information and documents listed in the schedule 1 to the Rules. The Board is keen, as part of its commitment to continuous improvement, to continue engaging with Scottish Ministers around whether this approach provides the best and most timely information.

3.1.3 The tests which the Board and its panels apply in making release decisions are many and complex. Release of life prisoners and some extended sentence prisoners are covered by statutory tests while all others are non-statutory tests, which have not been tested in court. The tests are set out in Section 25.

3.1.4 While the Board has inquisitorial duties, it has no powers to investigate but only to require information from investigators such as the police or Crown or to cite witnesses and question them by way of investigation.

3.1.5 Relations with the Scottish Ministers are regulated by a Memorandum of Understanding (MoU) which includes reference to governance processes. The MOU is available in the [portal](#). There is, however, no statutory basis for the governance arrangements. This issue has been recognised by Scottish Ministers and there is provision in the Management of Offenders (Scotland) Act 2019 for Scottish Ministers



to make Regulations in this respect. The Board awaits confirmation as to when these Regulations will be made and will seek to be involved in their drafting.

3.1.6 The Board's supporting administrative body, Parole Scotland, comprises civil servants recruited from the wider civil service in Scotland; they remain Scottish Government employees. Parole Scotland occupies Scottish Government premises. The Board has no independent budget but receives funding from the Justice Directorate budget monitored by Justice Directorate civil servants. The Board is also required to rely on the Scottish Government for provision and maintenance of Information Technology systems. As the complexity and scope of the Board's work continues to grow we will continue to discuss whether these arrangements remain proportionate and appropriate.

## **3.2 Types of Sentence and procedures for consideration**

3.2.1 The type of sentence imposed will determine both at which point in the sentence the Board will consider release, and under what procedures the review will take place.

### Short Term Determinate Sentence Prisoners

3.2.2 For prisoners sentenced to a determinate sentence of less than four years, the Board has no role in determining whether or not individuals are released into the community and they will be unconditionally released at the half way point (see section 1(1) of the 1993 Act). Short Term Sex Offenders (STSO) (see section 1AA of the 1993 Act) are released on licence, the conditions of which are set by the Parole Unit of the Scottish Prison Service on behalf of Scottish Ministers. The Board's involvement in these cases is only to consider grounds for recall to custody or re-release as appropriate.

### Long Term Determinate Sentence Prisoners

3.2.3 For offenders sentenced to determinate sentences of four years or more, the Board recommends to Scottish Ministers whether the individual offender should be released on licence at the half-way point of their sentence (the Parole Qualifying Date)

(see section 1(3) of the 1993 Act). The Board's recommendation is binding on Scottish Ministers. If early release is not directed at the first review then the Board will reconsider the offender's case at 12-month intervals until the offender reaches their Earliest Date of Liberation (EDL), at which point the Scottish Ministers are statutorily required to release the prisoner into the community on licence. A prisoner's EDL is the two thirds point of their sentence or 6 months before the expiry of the sentence, depending on when they were sentenced (See section 20 of this guidance).

3.2.4 The Board sets the licence conditions for all long-term determinate sentence prisoners. Requests to change licence conditions can be made at any point over the course of the licence period but there should be good grounds for doing so. Such requests are considered at casework meetings of the Board or by a meeting of at least two members.

#### Extended sentence prisoners

3.2.5 The Board will deal with extended sentence prisoners in one of two ways. When a short custodial term is imposed, but when taken with the extension period the total sentence is four years or more, the Board's role is to recommend licence conditions before release at their EDL. If the custodial term is four years or more, the Board deals with these cases as for long term determinate sentence prisoners. All extended sentence prisoners released on licence are subject to consideration of recall for the total remaining period of the extended sentence (that is, the custodial term and the extension period). Short Term Extended Sentence (STES) prisoners are released on licence, the conditions of which are set by the Parole Unit of the Scottish Prison Service on behalf of Scottish Ministers. An STES is one where the total sentence is less than four years.

#### Life sentence prisoners

3.2.6 Life sentence prisoners are reviewed at the end of the punishment part of their sentence, for possible release on life licence by a panel of the Board, at an oral hearing (sitting as a Life Prison oral hearing). This is a face-to-face consideration chaired by a

legally qualified member of the Board and two other Board members at which the prisoner and his legal representative are present.

3.2.7 It is for the panel to determine if the prisoner should continue to be confined for the protection of the public. If release on life licence is not directed then the panel must fix the date when it will next consider the prisoner's case. The date must be not later than two years after the date of the decision to decline to direct release.

#### Orders for Lifelong Restriction prisoners (OLRs)

3.2.8 The release arrangements for OLR prisoners are the same as life sentence prisoners which is that they are referred to the Board for consideration on the expiry of the punishment part of their sentence. The panel is required to have regard to the Risk Management Plan which has been approved by the Risk Management Authority.

### **3.3 Post-release considerations**

#### Recall of prisoners for breach of licence

3.3.1 Where a prisoner has been released on licence but there is evidence from which it can be inferred that the risk posed can no longer be safely managed in the community, usually because a licence condition has been breached, the prisoner may be liable to be recalled to custody by Scottish Ministers or the Board. Scottish Ministers usually make the decision when an urgent recall is needed, but in most cases. Scottish Ministers will refer the matter to the Board. The Board is required to consider the recall to custody of the following sentence types:

- short term sexual offenders;
- extended sentence prisoners;
- determinate sentence prisoners serving four years or more;
- life sentence prisoners; and
- prisoners subject to an OLR.

3.3.2 Prisoners are not advised when the Board is giving consideration to their possible recall. The case will be considered at a casework meeting of the Board, based

on reports. Usually recall decisions/recommendations are taken by a panel of two general members.

### Re-release Following Recall

3.3.3 When a prisoner has been recalled to custody, the Board is required to consider their suitability for re-release. The Board will consider if the risk posed can be safely managed in the community and the Board is required to determine if they should remain in custody.

3.3.4 The way in which the Board deals with these cases depends on the sentence type. For re-release of STSO, long-term determinate sentence prisoners or extended sentence prisoners (including STES) in the custodial term, the Board will consider these cases at a casework meeting. To ensure fairness, the members of the Board who consider re-release must be different from the members who considered an individual's recall.

3.3.5 Life sentence prisoners and prisoners subject to an OLR will be considered at an oral hearing.

3.3.6 For re-release of extended sentence prisoners, an oral hearing must be held if the prisoner has been recalled to custody and is serving the extension period of the sentence. This provides for the prisoner and their legal representative to present his case to the Board orally. If the prisoner is serving the custodial term of their sentence, the case will be considered at a casework meeting.

### Children and Young People

3.3.7 Statute requires that all Children and Young People (C&YP) sentenced to detention under Section 208 of the Criminal Procedure Act 1995 must be treated in the same way as long-term adults. This means that the Board is responsible for considering the early release of C&YP sentenced to four years or more detention, and for setting licence conditions for all C&YP sentenced to less than four years detention. C&YP on licence are liable to be recalled to custody in the same way as long-term

adults. Scottish Ministers are able to refer the case of a C&YP at any time and are not bound by parole qualifying dates.

### Oral Hearings

3.3.8 In all cases which are routinely dealt with at a casework meeting, consideration must be given to whether fairness requires, in the circumstances of the individual case, that an oral hearing should take place at which the prisoner can appear personally, along with a legal representative if they wish, and state their case.

### Compassionate Release

3.3.9 In compassionate release cases, Scottish Ministers ask for advice from the Board which can be accepted or declined. Decisions on whether to release on compassionate grounds lie with Scottish Ministers.

### Home Detention Curfews

3.3.10 The decision to grant a Home Detention Curfew (HDC) rests with the Scottish Prison Service. A risk assessment is undertaken, which includes a report from local authority criminal justice social workers. The Board only operates as the appellate body in the case of alleged breaches of HDC conditions.

### Adverse Developments

3.3.11 Once the Board has considered a case and made a decision, should any further information come to light which would have an impact on its decision, such as an adverse development or information which the Board did not have at the time it made its decision, the case can be formally referred back to the Parole Board.

### Deportation

3.3.12 The Board makes decisions and recommendations in cases where the prisoner may be subject to deportation on release. In cases where the prisoner who is liable to

deportation has a determinate sentence then the Board makes a recommendation which is binding on Scottish Ministers. In cases where the prisoner who is liable to deportation has an indeterminate sentence (life sentence or order for lifelong restriction) then only the Board can direct release.

#### Alterations to licence conditions

3.3.2 Whilst the Board will recommend the licence conditions to be set prior to the release of prisoners, there are some circumstances in which the Board might be asked by Scottish Ministers, following a request from a supervising officer, to change the licence conditions once the prisoner is on licence in the community. This might include transfer of supervision, the termination of the supervision element or the insertion or removal of a condition. The prisoner would be provided with the opportunity to make representations on the proposed changes and the Board would then consider the request at a casework meeting.

## Section 4 The Parole Board for Scotland

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 4.1 Duties and responsibilities

4.1.1 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 Ethical Standards in Public Life etc. (Scotland) Act 2000 which brought in a statutory Code of Conduct for Board Members of Devolved Public Bodies. The Nine Principles of Public Life in Scotland:

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

### 4.2 Accountability

4.2.1 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 (MoU) between the

Chair of the Board and Scottish Ministers. This MoU provides for a Parole Board Management Group (PBMG) to support the Chairperson in the corporate management of the Board. The Board’s Corporate Plan, Annual Report, Memorandum of Understanding and standing orders for PBMG are available through the “Publications” section of the Board’s [website](#).

### **4.3. Membership**

4.3.1 The composition of the Board is governed by Schedule 2 of the 1993 Act which is available in the [portal](#). Members are appointed through a process of application and selection. The appointment is to last a period of five years. A person who has been a member is eligible for appointment on a subsequent occasion. 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).

### **4.4 Induction, training & development**

4.4.1 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 oral hearing and casework procedures and the supporting paperwork including dossiers and decision minutes.

4.4.2 Following the training event, new members will observe one casework meeting and one oral hearing 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.



4.4.3 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.

4.4.4 Members are required to complete some mandatory on-line training in relation to data protection and IT security.

4.4.5 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.

#### **4.5. Parole Scotland**

4.5.1 Parole Scotland is responsible for, amongst other things, managing referrals from the SPS Parole Unit and the Board's workload. Members of Parole Scotland staff have responsibility for allocating work to members, and managing casework meetings and oral hearings. The Chief Executive of Parole Scotland has responsibility to the Chairperson for these matters.

## Section 5 Dossiers and their consideration

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 5.1 Role of the Scottish Ministers

5.1.1 “The Scottish Ministers” is the term used throughout Parole Board (Scotland) Rules 2022 (the Rules) and elsewhere, to denote the Scottish Government. The functions of the Scottish Ministers in relation to parole matters is normally carried out by officials of the Justice Directorate. Rule 5 requires the Scottish Ministers to send to the Board and to the “person concerned” (that is, the prisoner/patient), as far as practicable, and relevant to the case, dossiers containing information and documents listed in Schedule 1 to the Rules. However, the review and preparation of a dossier is normally carried out by SPS parole officers working in the prison where the prisoner is located. When a prisoner moves establishment around the time of preparation of the dossier, the dossier may be out of date and members should be alert to the current position.

5.1.2 Although the contents of the dossier are summarised in Schedule 1 to the Rules, the Schedule does not fully cover the all the information normally provided. The detailed approach to the preparation of dossiers is set out in a Memorandum of Understanding (MoU) “Agreement for the provision of parole services” signed by SPS and PBS in June 2020. Appendix A of the MoU sets out the content of the dossier in detail. Appendix C is an example of a dossier content page. The MoU also covers other matters such as access to prisons, and accommodation matters. Note that at present the MoU refers, in relation to Part B3 of the dossier, to the Response in Custody Report and the ERLO/LLO overview, but these have now been combined into a single form, the “Custody report”. The MoU also requires a particular approach to the preparation of the reports from the Prison Based Social Worker and the Community Based Social Worker, but this approach has also been altered by joint guidance issued by Social Work Scotland and the Board on 26 March 2020 and will change again with the introduction of the throughcare assessment for release on licence (TARL) approach – see paragraph 5.2.5 below. At present there are

occasional inconsistencies in the different forms used in the dossier, largely as a result of COVID 19-related changes, and work will continue to make the approach to dossiers more consistent and in line both with Schedule 1 to the Rules, and the MoU.

5.1.3 Referral by Ministers to the Board can be triggered by prisoners or patients becoming eligible for consideration of release on licence; the need to recommend licence conditions where statutory release is upcoming; breaches of the release licence; proposed amendments to licence conditions; and a range of other relevant considerations. The remainder of this section will refer to the “person concerned” as “the prisoner” and these references should be considered as applying equally to patients at the State Hospital or other secure facility. Once the dossier has been prepared it is sent electronically to the Board and a copy given 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 in the dossier cover note what the Board is being asked to decide and/or recommend.

5.1.4 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 the prisoner to be released on Home Detention Curfew (HDC) prior to release at the PQD.

## **5.2 The dossier - a general outline**

5.2.1 At initial referral the dossier cover note must as far as practicable contain the prisoner's full name and date of birth, prison number, and current sentence(s). Any significant dates including where applicable the parole qualifying date, the earliest date of liberation, licence and sentence end dates, must also be included in the cover note. Schedule 1 to the Rules also requires that details of any other places where the prisoner has been detained should be provided in the cover note, but at present this is normally included in the Custody Report later in the dossier. An example copy of a cover note is available on the [portal](#).

5.2.2 The dossier will also include pages setting out any pending cases and previous convictions of the prisoner. Such records may come from a variety of sources and it is important to check that the circumstances set out in the dossier align with the record of previous convictions, particularly in any pending cases. There can often be problems in securing previous conviction information from other UK jurisdictions. Members should be prepared to question any inconsistencies or gaps in the record.

5.2.3 Although it is not a specific requirement of Schedule 1 (although it is required by the MoU), it is important that the indictment served on the prisoner in relation to the index offence is included in the dossier. A report from the trial judge should be provided in any indeterminate case or where at a single court hearing a long-term sentence was imposed. 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.

5.2.4 The dossier also contains a custody report from the prisoner's personal officer, Life Liaison officer (LLO) or Early Release Liaison Officer (ERLO) countersigned by the hall manager, which covers conduct in custody, including engagement with prison activities such as work and education, any misconduct reports which the prisoner has incurred, and any offending behaviour programmes completed or proposed. It will identify any further work considered necessary and indicate 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.

5.2.5 It will contain a report indicating whether there is any intelligence on the prisoner and if there is negative intelligence on the prisoner it will give an outline of that intelligence and of its assessed reliability. It will also contain a healthcare report from NHS Scotland (NHS Scotland is responsible for health care in prisons in Scotland). It also contains two separate social work reports, one from the prison based social work team and one from the community based supervising officer. In 2023 the throughcare

assessment for release on licence (TARL) will be introduced. The TARL is a single report jointly prepared by the prison based and community based social workers and will replace the separate reports. The dossier will also include representations or other information submitted by the prisoner or by a solicitor on their behalf. The dossier may contain representations from a victim or victims.

5.2.6 If the prisoner is subject to an Order for Lifelong Restriction, the dossier will contain a Risk Management Plan (RMP) approved by the Risk Management Authority (RMA). It will also include the Annual Implementation Report (AIR) 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, whenever it is considering the case of a person in respect of whom there is an RMP, to have regard to the plan. If there is such a plan, it would not be competent to proceed without sight of it. When a short punishment part has been imposed an RMP and AIR may not be available when the case first comes before the Board.

5.2.7 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 Children and young person's cases**

5.3.1 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 on 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.

## **5.4 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), and details of any transfer for treatment direction as well as reports from the hospital social worker and the mental health officer. 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 panel will have to be mindful of this and apply the correct test.

## **5.5 Grounds for recall & consideration of re-release**

5.5.1 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. Any Police Scotland reports relating to the conduct should also be included.

5.5.2 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 indeterminate oral hearing cases for re-release consideration, the dossier will contain the full suite of reports expected in Schedule 1 and the MoU.

5.5.3 Where the Board is unable to reach a decision on the level of risk or for other reasons, it may defer or adjourn for further information (and see 5.9 below for more general guidance on deferral/adjournment). Therefore, it is open to the re-convened Board to revisit the issue of risk, especially in light of the new information that has come to hand. 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.

## **5.7 Matters to be taken into account**

5.7.1 Rules 11 and 12 specify the matters that may be taken into account by the panel. In practical terms the panel may take into account any matter which it considers to be relevant. Specifically this includes the nature and circumstances of any 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; and the effect on the safety or security of any other person, including in particular any victim or family member of a victim, or any family member of the prisoner.

5.7.2 Rule 12 is specifically directed towards the circumstances where the prisoner has not disclosed information about where or how the victim's remains were disposed of, and enables the panel to take this matter into account when considering the case.

## **5.8 Non-disclosure of information: “damaging information”**

5.8.1 Rule 9 provides for circumstances where information on the prisoner 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, which cannot be included in the dossier. In these circumstances the prisoner must be sent a written notice informing them that certain information has not been sent to them because it is “damaging” and giving the reason for this, so far as is practicable without prejudicing that reason. The

possible reasons defined in rule 9 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; have an adverse effect on national security; or damage the public interest. The Board may take into account any damaging information not disclosed to the prisoner.

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

## **5.9 Role of the Board after referral**

5.9.1 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 an oral hearing. The Board will often receive representations or other information from the prisoner.

5.9.2 The Board should not defer nor 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 should be mindful of the requirement for procedural fairness and should not normally decide to adjourn an oral hearing or a casework panel without taking the views of the prisoner or his solicitor on such an adjournment.

5.9.3 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. Decisions to defer or adjourn should not be made lightly but must always be made with fairness in mind.

5.9.4 A reasonable ground for deferring is that the time for receipt of representations will not have elapsed when the case is scheduled to come 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 which should have been made available to the Board but have not been. If release plans, the reported outcome of offending behaviour work or counselling, or psychological risk assessments are imminent but not available for the scheduled date, then it may be appropriate to defer the hearing for these to be produced.

5.9.5 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.

5.9.6 The context of statutory offences mentioned in the dossier, including previous convictions, may not always be immediately obvious. The website [legislation.gov.uk](https://www.legislation.gov.uk) 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.

## **5.10 Duty to make enquiries where there are gaps in information**

5.10.1 The panel makes a decision in relation to public protection, on the basis of assessment of risk. Part of the panel'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.

5.10.2 In such cases, it is not appropriate to proceed in the absence of this information. Instead, the panel should consider what enquiries are necessary to obtain the relevant information, and direct that these are made. The panel should specify the information that is required, and who should obtain this information. The panel may wish to make enquiries with bodies such as Scottish Prison Service, Crown Office or the NHS. The panel may require to use its powers in terms of rule 21 (in relation to casework meetings) to request information or documents from any person. In relation to oral hearings, rule 28 enables the panel chairperson to cite witnesses to provide evidence and compel the production of information or documentation. It may be necessary to postpone or adjourn a CWM or oral hearing until this information is available.

5.10.3 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*”.

5.10.4 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.

## **5.11 Written statement of preparation**

5.11.1 In oral hearing cases, rule 31 requires the prisoner or their representative to send the panel a statement indicating the extent to which that person is prepared for the oral hearing. The chairperson of the panel must consider the information contained in the written statement of preparation as soon as practicable after it is received. If necessary, the oral hearing can be postponed to enable the prisoner to be better prepared for the oral hearing.

## Section 6 Framework for decision-making

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 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 re-integration 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 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 explain 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 for example by the 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 that is, 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 A panel 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 panel 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 this has been done, then the court will be slow to interfere with the panel'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 their current conviction(s). The allocation of prisoners to particular programmes is assessed by the Programmes Case Management Board (PCMB) and confirmed by the prison's Risk Management Team (RMT) (and see 6.8.4 below). 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. Panel 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 (for example, mental health) sits on the rescheduled panel.

## **6.7 Previous convictions**

6.7.1 Where a prisoner has criminal convictions a copy of the record of previous convictions 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. Some printed records have to be read carefully as the format can result in a misalignment of the columns in the table. 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 and some cases included in the “pending” category may have already been dealt with.

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 for example, 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. 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, or 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 Panel 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 panel decision-making 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 Life, and Order for Lifelong Restriction prisoners

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 (OLR). The [Scottish Sentencing Council](#) provided the following definition of a life sentence. *“If a person is sentenced to life imprisonment, the judge must, by law, set a punishment part of the sentence. This is the minimum time the person must spend in prison before they can be considered for release into the community by the Parole Board for Scotland. Depending on the circumstances of the case, the punishment part can be lengthy. If a person sentenced to life imprisonment is released into the community, they will be on licence for the rest of their life and can be recalled to prison if they breach the terms of their licence.”* Prisoners subject to an OLR are also defined as life prisoners by 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 an oral hearing panel (the panel) constituted under Part 4 of the Parole Board (Scotland) Rules 2022. The timing of the first oral hearing in a life or OLR sentence prisoner's case is triggered by the 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 the panel.

### 7.2 Options

7.2.1 The panel has the power to direct release or not as the case may be and from time to time to adjourn a hearing; an adjournment before the oral hearing has commenced, will be referred to as a postponement.

7.2.2 In making a decision the panel 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 Panel members' responsibilities**

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

- i. Postponement of a hearing after considering the information contained in the written statement of preparation (rule 31 (2))
- ii. The variation of the date and notice period of an oral hearing (rule 25 (3))
- iii. The correction of irregularities and errors by direction or in the case of a document recording a decision by issuing a written correction slip (rule 18 (2 and 3))
- iv. The power to make, vary, or revoke directions (Rule 24 (1))

- v. To conduct a preliminary hearing (this power is also given to another legally qualified member appointed for this purpose) (Rule 8(3))
- vi. To decide on attendees at any preliminary hearing (this power is specifically given to “person or persons conducting the hearing”) (Rule 8(5))
- vii. The power to require witnesses to attend the oral hearing to give evidence, or to produce any information or other documents (Rule 28(2))
- viii. The power to grant or refuse a request for witnesses to be cited to attend the oral hearing to give evidence or produce any information or documents (Rule 28(4))
- ix. The power to grant or refuse the attendance at the oral hearing of someone to accompany any party (Rule 29(5))
- x. The power to authorise the attendance of registered victims at the oral hearing (Rule 30(6)) and any person accompanying the registered victim (Rule 30(7))
- xi. The power to authorise the attendance of anyone accompanying the prisoner (Rule 29(5)).
- xii. The power to disclose confidential information in terms of Rule 13(3)(a)

7.4.2 A decision to dispense with an oral hearing in terms of Rule 23 must be agreed by the parties and the panel.

7.4.3 The responsibility for taking relevant notes of the hearing falls to the parties and to the members of the panel. Notes taken during an oral hearing 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 panel 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.

## **7.5 Publication of a decision summary**

7.5.1 Where the oral hearing panel's decision on the case is a decision to direct the release of the prisoner, the panel must publish, in such manner as it may determine, a summary of the reasons for that decision. (Rule 34 (2))

7.5.2 Where the panel's decision is not to release a prisoner, the panel may publish a summary in such manner as it may determine. (Rule 34 (3))

## Section 8 Oral hearings & review periods

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

### 8.1 Historical position

**8.1.1 Under the Parole Board (Scotland) Rules 2001, the term “oral hearing” was used to refer to hearings which were fixed following consideration of the case at a casework meeting. These were referred to as “Part III” cases. Cases which were dealt with under “Part IV” (life, OLR and ESPs in the extension part of the sentence) were considered at a “tribunal”. The Rules had been amended over time, and the procedural rules in relation to “oral hearings” and “tribunals” were not aligned. This was unhelpful and confusing, and the 2022 Rules removes this distinction. Now, cases can be dealt with at a casework meeting “Part 3 cases” or by way of an oral hearing “Part 4 cases”. Cases which start at a casework meeting move to be dealt with under Part 4 if an oral hearing is fixed. The procedural rules in relation to an oral hearing are now the same, irrespective of the type of case or how it got to the oral hearing.**

### 8.2 Procedure at oral hearings

8.2.1 Rule 32 of the Parole Board (Scotland) Rules 2022 sets out the order of proceedings for an oral hearing and the handling of the proceedings. The oral hearing is required, as far as possible, 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. The Procedural Guides can be found in the [portal](#). 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 panel commences hearing the case.

8.2.2 Rule 16 provides that the oral hearing will take place by live link unless the Board decides that it should take place in-person. The Board has taken a policy decision that face-to-face hearings should only be convened where there is a good reason for doing so, such as a prisoner having hearing difficulties or mental health issues which would make a face-to-face hearing necessary. Where a request for a face-to-face hearing is made by one of the parties, the panel must give its decision no later than 5 working days before the hearing (although this period can be shortened by agreement of parties or under Rule 14(2)).

8.2.3 Evidence given to the Parole Board is not subject to the normal rules of evidence and the Board may consider and take into account material that would normally be considered inadmissible in 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.

8.2.4 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 an oral hearing.

8.2.5 In advance of the hearing, 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 hearing to speak to their recommendations. Panel members should have in mind the need to ensure that these views have been fully explored prior to reaching a decision, and, if the panel comes to a different view, to make clear within the minute why they rejected the evidence of professional witnesses. Rule 33 (4) specifically requires the panel to explain in its written decision the reasons why its decision differs in any respect from the recommendations in any risk management plan submitted to the Board in respect of an OLR prisoner. Members should note that the phrase “risk management plan” is



sometimes used loosely in documentation, but the phrase is defined in the Rules as applying to OLR prisoners.

8.2.6 Witnesses are cited in terms of Rule 28. This Rule allows other parties to request that a witness is authorised. No party can be compelled to give evidence or produce any document that a court of law could not compel them to do so. Where a witness is cited, they should be provided with an explanation as to why they are required. There is no time requirement in relation to citations, but witnesses should be given as much notice as possible. There is a potential criminal sanction if witnesses fail to attend.

8.2.7 A prisoner is entitled to be legally represented at the oral hearing. Where the Board is advised that the prisoner lacks capacity to instruct a solicitor it can appoint a solicitor to represent their interests (Rule 26(5)). The procedure for doing this can be found in section xx of this guidance.

8.2.8 Rule 31 provides that the prisoner or their legal representative must send the panel a statement of preparation not less than 10 working days before the hearing. It is important that the panel consider this when it is received, and address any issues raised in advance of the hearing if this is possible. It may be necessary to postpone the hearing if the issues raised are significant and cannot be addressed before the hearing.

8.2.9 The panel can authorise the attendance of any person at the oral hearing under Rule 27(3). This can be used to authorise the attendance of observers.

8.2.10 There are other issues which may be considered in advance of, or at an oral hearing. The Board has specific guidance on some of these. The issues could include

- A request from a victim to attend in terms of Rule 30. Guidance on this can be found in section 23 of this guidance.
- Information which has been submitted as non-disclosable information in terms of Rule 9. Guidance on this can be found in section 32 of this guidance.

8.2.11 The conduct and outcomes of hearings and casework considerations are kept under general scrutiny by the Chairperson of the Board and the Chief Executive of Parole Scotland.

### **8.3 Citing witnesses**

8.3.1 Where the panel considers that a social worker is required as a witness then the chair of the panel shall arrange for Parole Scotland to issue the citation. Where a party (normally the prisoner's solicitor) asks a panel to authorise the attendance of a social worker as a witness to attend the hearing (Rule 28(3)) and the request is granted, it will be appropriate for the chair of the panel to ask Parole Scotland to issue a citation. This will avoid a situation arising where a social worker does not attend the oral hearing because they believe that a request from a solicitor does not carry the same weight as a citation.

**8.3.2 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.**

8.3.3 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.

### **8.4 Decisions to release**

8.4.1 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.

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

## **8.5 No release decisions - further reviews and recommendations**

8.5.1 If not directing release, the panel must fix the date of the next review by an oral hearing. The 1993 Act specifies that the review period cannot exceed two years from the date of the decision in Life and OLR 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 panel. The decision can include the panel'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.

8.5.2 The Board, at the request of a life or OLR 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 such a prisoner if, for example, they consider 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 3 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 indeterminate 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 earliest date of liberation (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:

i) 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.

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

## Section 10 Casework meetings

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

### 10.1 General guidelines

10.1.1 Dossiers for a casework meeting are assembled by Parole Scotland and notified to members at least two weeks in advance of the meeting. All members are required to read the dossiers tabled for a casework meeting and come to a view on the merits of each case. As a result of the prior consideration of cases, questions often arise which are dealt with by email in advance of the meeting. This process often results in changes to the dossiers, and members should be alert to such changes and to information provided by email in advance of the meeting.

10.1.2 Members should place 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. A number of different approaches to managing the discussion of cases has developed and the chair should check with members that they are happy with the proposed approach. When working remotely, it can be helpful to share the minute with the other members on the Teams screen while it is being approved. Another approach is to agree the minutes as far as possible in advance and identify any areas of disagreement for discussion at the meeting.

10.1.4 If discussing the full details of the decision, start with a brief introduction covering identification and location of the prisoner and the reason for the case being considered. Avoid repeating minute details which are already known to the other members present.

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 When preparing the casework minute, 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 home background report 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 (see section 11). 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 their 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 an oral hearing 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 oral hearing. General members should review decision minutes timeously; if they are going to be unavailable and unable to review the decision minute after the oral hearing, they should advise the Chair of this fact.

11.2.3 Members sitting on a panel 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

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 panel of the Board. 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 panel'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 become more important 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 an oral hearing panel or a casework meeting. It is worth stressing that the decision made at the 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 their representative (if appointed) is aware of the facts available to the Board (unless Rule 9 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, particular issues may arise where a prisoner denies guilt, as 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 Disclosure of information about victims**

11.5.1 Rule 12 is specifically directed towards the circumstances where the prisoner has not disclosed information about where or how the victim's remains were disposed of, and enables the panel to take this matter into account when considering the case.

## **11.6 Lack of co-operation Cases**

11.6.1 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.

## **11.7 Psychological and Psychiatric assessment and reports**

11.7.1 The Board cannot commission psychological or psychiatric assessments. However, the Board can recommend that SPS commission such reports and can cite professional witnesses on such matters. Because the Board is a court, witnesses can be compelled to provide existing reports and answer questions regardless of confidentiality.

## **11.8 Dissenting decisions**

11.8.1 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	30 September 2022
Next scheduled review	30 September 2024

### 12.1 Introduction

12.1.1 Casework and oral hearing panels must 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 within each relevant template minute or intimation, 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, 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 in 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 re-number 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 for licence conditions within their reports will often mirror the template.

12.3.3 In considering the application of the test, the panel 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 in the decision minute the reasons why they were deemed appropriate). Members should also take particular care when considering the necessary and proportionate aspects of the graded conditions in the template under “Addictions and dependencies” and the alternative groups of conditions under “Information technology” and “Electronic monitoring/Curfew”.

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. Any request for an inclusion condition should be given careful consideration as it is likely to restrict the prisoner’s movements.

## 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 2022 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 cases where there is to be an oral hearing, adverse information received by the Scottish Ministers before the oral hearing will be referred and sent to panel members. Adverse information can sometimes be made known during the course of the oral hearing and it is good practice to seek an early update of the prisoner's situation.

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 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. This period may be varied under Rule 14(2), although Rule 14(3) requires that if the panel or Board varies the time period it must have regard to the desirability of avoiding unnecessary delay in relation to the case, and the need to ensure fairness to the parties.

13.2.6 Where the adverse development concerns intelligence information, the Board or panel 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 9 information in these circumstances.

13.2.7 Occasionally, the panel or Board may receive an adverse report **after** the decision has been made to release the prisoner. The case of *Dickins* was authority that the Board has no locus to reconsider a decision after it had been intimated to the prisoner. Rule 19 subsequently introduced a power for the Chairperson to reconsider decisions where there has been a procedural or administrative defect, but this excludes decisions to recommend or direct release or re-release. Where the decision to release 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.

## Section 14 Supervision in the community

Date of last review	30 September 2022
Next scheduled review	30 September 2024

### 14.1 Introduction

14.1.1 The Board’s decisions on whether to direct early release from prison on licence, with 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 on 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. The following paragraphs give a brief overview.

14.1.3 The term “throughcare” refers to a range of services provided to assist prisoners to prepare for release and to help them resettle in the community. To be effective, throughcare services must be focused, consistent and adapted both to the risk and needs of the offender, and to the type of offending. The National Standards seek to ensure consistent practice in criminal justice social work services across all local authorities in Scotland. 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 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 the Board with decision making. This should include an analysis of offending which considers the pattern, nature and seriousness of the offending to date; the likelihood of and impact of reoffending; needs which if met will sustain desistance from offending, and release plans. All assessments should be informed by the use of agreed risk assessment tools. The prison based social worker will evaluate the information and give an opinion on the manageability of risk in the community and suggest licence conditions.

14.2.2 Social workers in the community provide a Home Background Report to assist decision making. The report will include information on the prisoner's background and current circumstances, an assessment of their 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 report will include the proposed release address and an assessment of its suitability, and a provisional release plan. The community based social worker will evaluate the information, give an opinion on the manageability of risk in the community and include proposed licence conditions.

14.2.3 There should be consultation between the authors of both 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 panel. 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. It is reviewed regularly and can be reduced or increased depending on the risk and needs of the individual. The level of supervision and intensity of contact must be determined by an assessment of the likelihood for further offending along with a consideration of the pattern, nature and seriousness of the offending to date. 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 added, amended or removed by Scottish Ministers after consultation with the Board. Early termination of the supervision conditions is possible. When application is made for the removal of the supervision element of a licence the offender remains subject to the requirements:

- You shall inform your supervising officer immediately if you are arrested or questioned by the police; and
- You shall be of good behaviour and shall keep the peace.

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 apply additional licence conditions which enable the offender's continuing management in the community, for example 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 necessity and proportionality of 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 following a recommendation by the Board, usually once the offender has spent a significant period in the community without incident. The offender remains subject to the requirements:

- You shall inform your supervising officer immediately if you are arrested or questioned by the police; and
- You shall be of good behaviour and shall keep the peace.

## **14.6 Transfer of supervision**

14.6.1 A supervising criminal justice social work service may apply for transfer of supervision to another local authority 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 specifies a particular residential location (for example a rehabilitation facility) the prisoner cannot move address until the Board approves either deletion of that condition or a specific change of address. Care should be exercised before recommending that the residential facility should be named as an additional licence condition as it could have 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 place 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 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 does 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, and after their sentence has ended.

14.9.2 The objectives of voluntary assistance (most usually referred to as voluntary throughcare) are similar to those of statutory supervision, except that there is no element of compulsion to engage with services.

## 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 2022 (the Rules). It is important to note that Rule 3(2) states that Rules 4 and 10 do not apply in recall cases: Rule 4 requires Ministers to give notice of the referral to the prisoner and Rule 10 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 11 of the Rules provides that:

**"11. Matters to be taken into account**

In considering a case, the panel may take into account any matter which it considers to be relevant to the case, including—

- (a) the nature and circumstances of any offence of which the person concerned has been convicted or found guilty by a court,
- (b) the conduct of the person concerned over the duration of their current sentence or sentences,

- (c) the risk of the person concerned committing any offence or causing harm to any other person if that person were to be released on licence, remain on licence or be re-released on licence (as the case may be),
- (d) what the person concerned intends to do if released on licence, permitted to remain on licence, or re-released (as the case may be), and the likelihood of that person fulfilling those intentions,
- (e) the effect on the safety or security of any other person (including in particular any victim or any family member of a victim, or any family member of the person concerned), were the person concerned to be released on licence, remain on licence, or be re-released on licence (as the case may be).

15.1.8 Rule 12 provides that where a prisoner is serving a sentence of life imprisonment, detention for life or detention without limit of time, and the sentence was imposed following a conviction for murder or culpable homicide in Scotland or for an equivalent offence imposed by a court elsewhere in the United Kingdom then the panel may take into account that the prisoner has not disclosed where and how the victim's remains were disposed of if that is not known to the panel and it believes that the prisoner has this information. It will be a matter for the panel to decide whether to take this into account and, if so, how much weight should be attached to it. However, the panel should make their approach and the reasons for it clear in the decision minute.

15.1.9 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.

15.1.10 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.

15.1.11 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.

15.1.12 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.

15.1.13 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, and the reasons why further charges did not result in a conviction. 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 Rule 7 provides that recall decisions can be made by a single member of the Board, although in practice 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. Rule 7(7) requires that a member of a casework meeting which recommended recall to custody cannot sit on any subsequent casework meeting or oral hearing 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 Indeterminate sentence prisoners have their cases considered at an oral hearing, constituted under Part 4 of the Parole Board Rules. Other cases for re-release are considered under Part 3 of the Parole Board Rules by a panel of the Board, although that panel can decide to hold an oral hearing under Part 4. Where the case is being dealt with under Part 3, re-release will be considered whether or not representations have been received. In cases which are being dealt with by way of an oral hearing under Part 4, re-release will be considered at the hearing 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 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 3 of the Parole Board Rules are chaired by a legal member. The requirement for a legal chair in Part 3 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 indeterminate sentence 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 an indeterminate sentence 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 panel 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 an oral hearing. It is a matter for Board members to satisfy themselves that 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, or, where the case is initially dealt with under Part 3, to direct that an oral hearing be convened in terms of Part 4, or to defer for further information.

## **16.4 Parole Board considerations**

16.4.1 Cases where re-release is to be considered by way of an oral hearing are conducted in accordance with Part 4 of The Parole Board Rules.

## **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 3 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 9 although in certain circumstances the substance will not be provided. In oral hearings there are preliminary procedures that can be invoked to avoid a hearing having to be later adjourned. However, where necessary the oral hearing panel has the power to adjourn.

## **16.6 Decisions to release**

16.6.1 If an oral hearing panel 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 panel to submit 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.

16.6.2 In casework cases (Part 3 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 a life sentence or OLR prisoner oral hearing does not direct re-release following recall, the next review must be on a date fixed by the panel, 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 panel has selected the review period.

16.7.2 Where a panel 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 Consideration of oral hearings at a casework meeting

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. 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 oral hearing. This would be conducted in terms of Part 4 of the Rules.

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 oral hearings ordered by the Board.

17.1.4 This guidance is intended to support Board members in decision making around the ordering of oral hearings where the case is initially considered at a casework meeting. However, it is not to be considered exhaustive and there may be cases not covered here where an oral hearing 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 oral hearings.

17.2.2 In every case (including recall cases) the decision minutes should note that an oral hearing was considered. Where an oral hearing is not fixed, care must be taken to explain the reasons for this decision, particularly where an oral hearing 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 oral hearing. 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 Oral hearings are not restricted to the resolution of disputes about facts. A range of other issues may be examined at an oral hearing.

17.2.4 The likelihood of being released following the oral hearing 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 oral hearing 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 oral hearing 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 oral hearing 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 oral hearings 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 oral hearing 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 oral hearing.

17.2.8 When considering casework dossiers, panels of the Board should always consider an oral hearing 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 oral hearing 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 oral hearing 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 oral hearing 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 oral hearing can provide?
- viii. Is an oral hearing 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 oral hearing 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 oral hearing should be granted. It will be necessary to cite the relevant social workers to attend the oral hearing.

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

17.2.9 Panels should identify what information may be required for the oral hearing. 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 oral hearing should not be ordered**

17.3.1 An oral hearing 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 oral hearing and it may be necessary to explore the legitimacy of this contribution with them or with their lawyer before making a decision. An oral hearing should not 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 oral hearings. The Board should not look for ways to avoid ordering oral hearings 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 oral hearing. 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 oral hearing is appropriate.

### **17.4 Procedure in advance of the oral hearing**

17.4.1 The Board may receive requests from solicitors or prisoners to authorise the attendance of witnesses at the oral hearing. 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 oral hearing to reach a decision, particularly when factual matters are at issue. These requests are normally considered by the Chair allocated to the oral hearing, 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 oral hearing 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 oral hearing. 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-

- The decision to release at an oral hearing 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.
- 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.

## Section 18 Home Detention Curfew – appeal against recall

Date of last review	20 January 2023
Next scheduled review	20 January 2025

### 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 decides 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 (a minimum of two Members is 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 oral hearing 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.

**Section 19 Sentence types**

Date of last review	30 September 2022
Next scheduled review	30 September 2024

<b>SENTENCE TYPE</b>	<b>DOES AUTOMATIC EARLY RELEASE APPLY?</b>	<b>IS AUTOMATIC RELEASE WITH LICENCE CONDITIONS?</b>	<b>ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)</b>	<b>SUBSEQUENT CONSIDERATIONS</b>
Life Sentence	N/A	N/A	Make binding direction about release on licence at end of punishment part of sentence (oral hearing under Part 4 of the Rules). Set, amend or terminate licence conditions. Consideration of recall and rerelease. For re-release an oral hearing is required	Not more than two years
Order for Lifelong Restriction (OLR)	N/A	N/A	Make binding direction about release on licence at end of punishment part of sentence (oral hearing under Part 4 of the Rules). Set, amend or terminate licence conditions Consideration of recall and rerelease. For re-release an oral hearing is required	Not more than two years
Extended (custodial part is 4 years or more)	If not previously released on parole, released at the EDL <sup>i</sup> except for terrorism	Yes Licence conditions set by the Board.	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). Board may	At Board discretion. Prisoner cannot require SMs to refer to PB within 12 months



SENTENCE TYPE	DOES AUTOMATIC EARLY RELEASE APPLY?	IS AUTOMATIC RELEASE WITH LICENCE CONDITIONS?	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
	cases (see separate sentence type).		consider if oral hearing is required if recalled in custodial part of sentence. For re-release an oral hearing is required if in extension period	
Extended (custodial part is less than 4 years and total sentence is 4 years or more)	Released at ½ way point of custodial part of sentence except for terrorism cases (see separate sentence type)	Yes Licence conditions set by the Board.	Set or amend licence conditions Consideration of recall and re-release (a decision to re-release is a binding direction). For re-release an oral hearing is required if in extension period	At Board discretion. Prisoner cannot require SMs to refer to PB within 12 months
Extended (total sentence is less than 4 years)	Released at ½ way point of custodial part of sentence except for terrorism cases (see separate sentence type).	Yes Licence conditions set by SMs.	Amend licence conditions. Consideration of recall and re-release (a decision to re-release is a binding direction). For re-release an oral hearing is required if in extension period	
Long term determinate (sentence of 4 years or more)	If not previously released on parole, released at the EDL <sup>1</sup> except for terrorism cases (see separate sentence type).	Yes Licence conditions set by the Board.	Make binding recommendation about release on licence at ½ way point – PQD Set or amend licence conditions Consideration of recall and rerelease. Board may consider if oral hearing required for re-release	Annually

SENTENCE TYPE	DOES AUTOMATIC EARLY RELEASE APPLY?	IS AUTOMATIC RELEASE WITH LICENCE CONDITIONS?	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
Children and Young People (C&YP) (sentence of 4 years or more)	If not previously released on parole, released at $\frac{2}{3}$ point of sentence except for terrorism cases (see separate sentence type)	Yes Licence conditions set by the Board <sup>ii</sup>	Make binding recommendation about release on licence at any time up to $\frac{2}{3}$ point Consideration of recall and rerelease Set or amend licence conditions Board to additionally consider if oral hearing required due to age of child or young person	At Board discretion
Children and Young People (C&YP) (sentence less than 4 years)	If not previously released on parole, released at $\frac{1}{2}$ way point of sentence except for terrorism cases (see separate sentence type)	Yes Licence conditions set by the Board <sup>2</sup>	Make binding recommendation about release on licence at any time up to $\frac{1}{2}$ way point of sentence Consideration of recall and rerelease Set or amend licence conditions Board to additionally consider if oral hearing required due to age of child or young person	At Board discretion
Short term determinate (STSO) (sentence less than 4 years)	Released at $\frac{1}{2}$ way point of sentence except for terrorism cases (see separate sentence type)	Yes Licence conditions set by SMs.	Consideration of recall and rerelease (SMs set licence conditions). Board to consider if oral hearing required for rerelease	At Board discretion (recall cases only)
Short term determinate (sentence less than 4 years)	Released at $\frac{1}{2}$ way point of sentence except for terrorism cases (see separate sentence type)	No	None	N/A

SENTENCE TYPE	DOES AUTOMATIC EARLY RELEASE APPLY?	IS AUTOMATIC RELEASE WITH LICENCE CONDITIONS?	ROLE OF THE PAROLE BOARD FOR SCOTLAND (ALL CASEWORK UNLESS INDICATED)	SUBSEQUENT CONSIDERATIONS
Terrorism cases – both short-term and long-term sentence prisoners	Automatic early release does not apply in terrorism cases.	N/A	Make binding recommendation about release on licence at $\frac{2}{3}$ 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 oral hearing required for re-release	At Board discretion. Scottish Ministers should make a further referral no later than two years after the Board's recommendation
Home Detention Curfew	N/A	N/A	To decide on appeals against refusal / loss of Home Detention Curfew	N/A

<sup>1</sup> For long-term determinate and extended sentence prisoners, automatic early release is at the earliest date of liberation (EDL). For determinate cases where the sentence was imposed after 1 February 2016, 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.

## 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. Special considerations apply to terrorism cases and further information is provided at section 27 of this guidance.

### 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 sentence calculation 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	30 September 2022
Next scheduled review	30 September 2024

### 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 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. It is the Board's role to recommend changes to licence conditions allowing for transfer to another area.

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 any strong compassionate or other compelling grounds to support the request?
- Would the transfer have an adverse effect on the protection of the public, the 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 Scotland will continue to apply and the offender will be subject to the same duration of supervision under the same conditions as they would have been in Scotland as well as to any other conditions specified by the receiving jurisdiction.

### **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 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 they wish to reside. Members must have regard to the risk that the offender may pose in the country of residence. 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 the licence 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 they must contact the social work or probation service through which they were formerly managed within 48 hours of their return.

## **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 as an offender may return to the UK. In such cases, supervision would resume on the offender's return to the UK.

## 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. Under section 17 of the Criminal Justice (Scotland) Act 2003, they are invited either to 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 oral hearing process. The victim should be told who will receive copies of the interview report, how the information will be used by the panel members, when a life prisoner qualifies for consideration for release, and the test which the panel 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 the Victims Team 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 observe the oral hearing. The right of victims to request to attend an oral hearing is now enshrined in rule 30. Registered victims must write to Parole Scotland requesting to observe a hearing

22.2.7 Victims should be advised that they can request a summary minute after the oral hearing. Victims should also be advised that where the decision is not to release, the discretion on whether to issue a summary minute lies with the panel. Where the decision is to release, the panel must issue a summary minute.

22.2.8 It is important to note that under Rule 9 of the Parole Board (Scotland) Rules 2022, 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 9(1)(a) to (f). 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 the Legal 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 9 and, if so, how to deal with the information, lies with the panel allocated the case. Victims cannot proceed on the basis that the information they give at interview 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 13 of the Parole Board (Scotland) Rules 2022 (the Rules) provides as follows:-

#### **13.— Confidentiality**

*(1) The information to which this rule applies must not be disclosed either directly or indirectly to any person not involved in the proceedings to which the information relates or to the public, unless an exception listed in paragraph (3) applies.*

*(2) This rule applies to —*

- (a) information related to a case referred to the Board, or to the proceedings of the Board or a panel in considering a case,*
- (b) information about any application, document, or any other information provided to the Board or to a panel,*
- (c) the name of any person involved in the proceedings.*

*(3) The exceptions are—*

- (a) if, and to the extent that, the chairperson of the Board or the chairperson of the panel considering the case directs or otherwise authorises disclosure of the information,*
- (b) to the extent necessary in connection with any court proceedings or any person's statutory functions, or*
  - (c) to the extent necessary for the purpose of a summary published under rule 34.*

### 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*). At that time, the equivalent rule in the Parole Board (Scotland) Rules 2001 was rule 9. The relevant rule in the Parole Board (Scotland) Rules 2022 is rule 13. 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, nor to 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 Rule 34 of the Rules provides as follows:

**34.— Publication of decision summary**

*(1) This rule applies to indeterminate cases only.*

*(2) Where the oral hearing panel's decision on the case is a decision to direct that the person concerned is released, the panel must publish, in such manner as it may determine, a summary of the reasons for that decision.*

*(3) Where the panel's decision on the case is not one mentioned in paragraph (2), the panel may publish, in such manner as it may determine, a summary of the reasons for that decision.*

*(4) A summary published under this rule must not include information which identifies, or could be used to identify, any person involved in the proceedings.*

*(5) In publishing a summary under this rule, the panel 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.*

*(6) Before publishing a summary under this rule, the panel must send a copy of the summary to any registered Part 2 victim in relation to the case, and may send a copy to any registered Part 1 victim who so requests.*

*(7) In this rule—*

*"registered part 1 victim" means a person who has intimated under section 16(1) of the Criminal Justice (Scotland) Act 2003 that they wish to receive information about the release of an offender, and*

*"registered part 2 victim" has the same meaning as in rule 30.*

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 34, 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 oral hearing chair in such proceedings, and with the chairperson of the Board in all other cases. In oral hearing cases, the chair will wish to take the views of the other members of the panel into account in reaching a decision on what information should be disclosed, although ultimately the decision lies with the chairperson.

23.2.5 In considering whether and how to exercise this discretion, the oral hearing chairperson 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 Oral hearing chairpersons should attach significant weight to the desirability of transparency, which helps maintain public confidence in the role of the Parole Board for Scotland. Chairpersons 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 oral hearing as defined at Rule 27(3). Rule 30 of the Rules provides as follows:

**30.— Observation of oral hearing by victim**

*(1) This rule applies to indeterminate cases only.*

*(2) A registered Part 2 victim (a "registered victim") in relation to a case to which this rule applies may attend an oral hearing under this Part for the purpose of observing proceedings if authorised to do so under this rule.*

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

*(4) An application mentioned in paragraph (2) must be made 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.*

*(5) 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.*

*(6) The chairperson of the panel may grant or refuse an application under paragraph (1), and must send the registered victim and the parties*

*a written notice of the decision which includes the reasons for the decision.*

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

*(8) Attendance at an oral hearing under this rule is to be by live link unless the panel considers that another means of attendance is required and is in the interests of justice.*

*(9) The panel may at any time exclude a registered victim or a support person mentioned in paragraph (7) from any part of the oral hearing.*

*(10) In this rule—*

*"live link" means any arrangements 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 held,*

*"registered Part 2 victim" means a person who has—*

- (i) intimated under section 17(2) of the Criminal Justice (Scotland) Act 2003 that they wish to be afforded the opportunity to make representations in respect of decisions to release a convicted person on licence, or*
- (ii) intimated under section 17(11) of that Act that they wish to receive information under that section.*

23.2.8 If an oral hearing chair receives a request for information or a request to attend an oral hearing 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 oral hearing 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 an oral hearing. 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 Rule 13 provides that the decision on whether to waive confidentiality and authorise disclosure of information lies with “*the chairperson of the Board or the chairperson of the panel*”. In Part 4 cases (indeterminate sentences) the decision should be taken by the chairperson of the panel, in consultation with the other panel members. However, it is often the case that Part 3 cases (casework) are considered without the involvement of a legally qualified chair. Accordingly, the Chair of the Board has decided that the decision to waive confidentiality and authorise disclosure of information in Part 3 cases should be taken by the Chair of the Board, or a person to whom this decision has been delegated (in practice, the Legal Vice-Chair). Where a panel considering a Part 3 case is asked to disclose information the panel should remit the decision to the Chair of the Board or the Legal Vice-Chair.

23.2.11 The Board has prepared separate guidance about the attendance of victims at indeterminate oral hearings and about what should be included in a summary minute. This can be found in the [portal](#).

## 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 oral hearing 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 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 concludes.

## 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 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 Indeterminate oral hearing 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. **Life or OLR Sentence Prisoner Oral Hearings** (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 panel is not satisfied on this matter and, it does not direct release. The decision of the panel is by a majority / unanimous. The next review should take place X months from the date of consideration.

**OR**

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

ii. **Extended Sentence Prisoner Oral Hearings** (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 panel is satisfied on this matter and does not direct release. The decision of the panel is by a majority / unanimous. The next review should take place X months from the date of consideration.

**OR**

The panel 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 terrorist 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	30 September 2022
Next scheduled review	30 September 2024

### 28.1 Introduction

28.1.1 Rule 8 of the Parole Board (Scotland) Rules 2022 (the Rules) allows for a preliminary hearing (PH) in any case where necessary. In Part 4 cases the PH must be conducted by the chair of the panel or another legally qualified member and can include the other panel members if appropriate. In any other cases, the PH is conducted by the chairperson of the Board or any member(s) appointed for that purpose. It is for the person conducting the PH to decide who should attend, but ordinarily they would sit without other members and both parties and their representatives may attend. 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. PHs are heard in private. The decision must be recorded in writing and sent to parties within 10 working days of the conclusion of the hearing.

### 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 (hearing or CWM). Normally this will be for more complex cases where a discussion may be necessary with the prisoner's solicitor or with other professionals to assist the management of the case. The purpose of a PH is to resolve any issues which would prevent the panel from reaching a decision, and/or to identify issues and how they should be addressed. A PH should not be held where it would be 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 hearing that certain matters may be best addressed through a PH prior to the case coming back to a full hearing. It may be relevant to hold a PH where there are concerns that a scheduled hearing may not be able to proceed



AND it appears to be necessary to discuss relevant matters with the prisoner and/or their solicitor and with other professionals involved in the prisoner's case beforehand. It will normally be the case that, at the very least, the prisoner's solicitor will be in attendance. Where no solicitor has been engaged, the prisoner would normally be in attendance.

28.2.3 It may be that the need for a PH is identified at a casework meeting. It is envisaged that there may be situations where a panel at a casework meeting identifies issues best addressed through a PH. In such cases the consideration of the case would revert to a casework meeting or to an oral hearing after the PH has been concluded.

### **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 the hearing 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 hearing 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 to instruct a solicitor or to fully participate in their hearing.

## Section 29 Potential for prisoners to incriminate themselves

Date of last review	30 September 2022
Next scheduled review	30 September 2024

### 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. In such cases, prisoners will be warned that they are not required to say anything that might result in them incriminating themselves. However, some recent 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 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 at the outset of the hearing that they are not required to say anything about such matters. 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. The warnings should make clear that in such a situation the Board will be required to report the information to Crown Office. Rule 13 of the Parole Board (Scotland) Rules 2022 makes it clear that proceedings of the Board are confidential, but rule 13(3) acknowledges that there may be situations where the Board may need to divulge such information despite the general approach of keeping matters confidential. The chair of the hearing should ensure that they use 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, to the extent necessary in connection with any court proceedings or any person's statutory functions, is required to pass such information in an appropriate way to Crown Office or any other relevant person. It should be made clear that if the prisoner decides that they wish to provide information about outstanding criminal matters despite being warned against doing so, it is their decision, and indeed they may want to do so in order to persuade a panel of the Board to direct their re-release or recommend their release.

29.2.4 Any situation where it might be necessary to pass such information to Crown Office or any other relevant person 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 panel 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 applies 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	30 September 2022
Next scheduled review	30 September 2024

### 30.1 Consideration of release

30.1.1 The Board is required to consider risk to communities both in the UK and in the country to which an 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.

30.1.2 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.

30.1.3 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.

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

30.1.5 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.

30.1.6 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.

30.1.7 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.

30.1.8 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. There are no reciprocal arrangements in place between the United Kingdom and any other country for the supervision of people on licence. 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.

## **30.2 Tests for release**

30.2.1 In all cases, 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.

### **30.3 Licence conditions**

30.3.1 Recommended licence conditions 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.

30.3.2 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.

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

## Section 31 Early intimation of decisions

Date of last review	30 September 2022
Next scheduled review	30 September 2024

### 31.1 Introduction

31.1.1 Early intimation of the decision of a panel is 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 The early intimation should be submitted to Parole Scotland on the day of the hearing by the chair of the panel. The template can be found in the [portal](#).

31.1.3 If the case is adjourned, it is important to include a list of requirements, such as witnesses who require to be cited, so that Parole Scotland can start to take action before the final minute is issued. If possible, timescales should be provided for actions including the provision of information, as these can then be used by the Parole Scotland casework team to assist in case management.

## Section 32 The operation of Rule 9

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 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 2022 which describes the dossier requirements 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 9 of the 2022 Rules is designed to deal with such situations. It states:

### Rule 9. **Non-disclosure of information**

(1) This rule applies where information mentioned in paragraph (2) is determined by the Scottish Ministers, a panel or the Board, as the case may be, to be information which should not be disclosed to the person concerned ("damaging information") for one of the following reasons—

- (a) the disclosure would be likely to adversely affect the health, welfare or safety of any person,
- (b) the disclosure would be likely to result in the commission of an offence,
- (c) the disclosure would be likely to facilitate an escape from legal custody or adversely affect the safe keeping of any person in legal custody,
- (d) the disclosure would be likely to impede the prevention, investigation or detection of offences, or the apprehension or prosecution of suspected offenders,
- (e) the disclosure would be likely to have an adverse effect on national security,
- (f) the disclosure would be likely to otherwise damage the public interest.

(2) The information is any—

- (a) dossier information relating to the case,
- (b) other information identified by the Scottish Ministers as relevant to the case,
- (c) written representations made by a victim in relation to the case, a family member of such a victim, or a family member of the person concerned or any written record of oral representations made by such a person,
- (d) other information or document provided in relation to the case.

(3) Where this rule applies—

- (a) the damaging information is not to be sent to the person concerned,
- (b) a written notice is to be sent to the person concerned
  - (i) informing that person that certain information has not been sent to them because it has been classed as damaging information,
  - (ii) specifying the reason, of those listed in paragraph (1), for the information being classed as damaging information, and
  - (iii) setting out, as far as is practicable without prejudicing that reason, the substance of the damaging information.
- (c) if the notice mentioned in sub-paragraph (b) is sent by the Scottish Ministers, a copy of the notice is to be sent to the Board at the same time.

(4) The panel is then to consider the damaging information and determine whether it is material to their consideration of the case.

(5) If the panel determines that the information is not material to their consideration of the case, the case may be determined without having regard to that information.

(6) If the panel determines that the information is or could be material to the case, it may make arrangements for the withholding of the information from the person concerned to be scrutinised at a preliminary hearing or such other proceedings as the panel considers appropriate.

(7) For the purpose of paragraph (6), the arrangements may include the appointment of a special advocate to review the damaging information and make representations to the panel as to—

- (a) the justification for withholding the information from the person concerned, and
- (b) whether the interests of justice, balanced against that justification, require any additional disclosure of any part of the information to the person concerned.

(8) The special advocate must not disclose the content of the damaging information to the person concerned, their representative, or to any person who is not a member of the panel.

(9) Following any steps taken under paragraph (6), the panel must determine whether any further disclosure of the information to the person concerned is required in the interests of justice, and if so, must make arrangements to send that information to that person as soon as possible.

(10) In this rule—

"special advocate" means an independent solicitor or advocate,

"victim" means any victim of the offence for which the person concerned's current sentence was imposed.

32.2.3 It can be seen that the information can be deemed to fall under Rule 9 either by Scottish Ministers, by the panel which is considering the case, or the Board. The Board's power to do so lies with the Chair of the Board, and is currently delegated to the Legal Vice-Chair. The Chair of the Board has decided that decisions about whether information should be fall under Rule 9 which require to be made in advance of the oral hearing should be made by the Board Chair or Legal Vice-Chair rather than the panel, as this avoids the panel having to put information from its mind if the information is then withdrawn. There will be infrequent occasions where the issue arises within the oral hearing, in which case the panel should make the decision. Where this arises, the panel will require to be satisfied that one of the criteria set out at 9(1)(a)-(f) is met before the information can be determined to fall under Rule 9. If so, the panel will then require to consider what information can be disclosed to the offender as the substance of the information, or whether it is not possible to provide the substance without prejudicing the reason for not disclosing the information. Rule 9(3) provides that the offender is notified in writing although it is likely that where the issue arises within the oral hearing, the panel will waive this requirement and notify the offender orally.

Where such information is present, the offender requires to be notified of this fact, and provided with the "substance" of it (that is, as much information about it as can be

safely disclosed) unless disclosing the substance would prejudice the reason for which the information is not disclosed.

32.2.4 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.

### **32.3 Suggested approach**

32.3.1 The first issues which the panel may wish to determine are:

- a) Is the information material, that is, does it impact on the panel's assessment of risk, and its application of the tests for release?
- b) If it is material, does the panel require to attach weight to it? There may be cases where, although the information is material, there is enough disclosed information within the dossier or from evidence provided at a hearing to allow the panel to reach a conclusion without attaching weight to the Rule 9 information.

32.3.2 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.

32.3.3 In a hearing, it is suggested that the Chair should raise the fact that the Board has received the Rule 9 information as a preliminary matter. They should advise the offender and their legal representative that the 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

9 information (beyond that which has been disclosed to them in advance or is otherwise available in the dossier).

32.3.4 At the end of this part of the hearing, the panel should adjourn in order to consider whether it may be necessary to attach weight to the Rule 9 information. Parties should remain available to be advised of this decision on the day.

32.3.5 Where the information is not material, 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 panel did not consider that the information was material.

32.3.6 Where the information is material, but the 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 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 material, and that the panel did not require to attach weight to it.

32.3.7 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 material, then the decision can be reached in the usual way. If the information is material, but the Members have not required to attach weight to it, then this should be clearly recorded in the minute.

## **32.4 Position where the panel may require to attach weight to the Rule 9 information**

32.4.1 Where a hearing has been scheduled and the panel may require to attach weight to the rule 9 information, the panel should consider whether any preliminary procedure is required in the interests of fairness, such as inviting written legal submissions, the fixing of a preliminary hearing, or the appointment of a special advocate. The offender and their legal representative should have the opportunity to make submissions on how to proceed. These and evidence on the non-disclosure

information may be considered before the scheduled hearing or at the preliminary session of an evidential hearing. In casework meetings, this would be facilitated by fixing a preliminary hearing. If there is to be a preliminary hearing then the 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. They should be cited to attend the preliminary hearing. Consideration should also be given to whether a special advocate is required. Ten working days' notice of a preliminary hearing must be given to all parties, although this can be shortened under Rule 14(2). Although the Rules do not require it, it is necessary to inform all parties of the appointment of a special advocate.

### **32.5 Procedure on Rule 9 matters at an oral hearing**

32.5.1 The hearing should be convened without the presence of the offender and their legal representative. The 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.

32.5.2 In relation to whether the information should be disclosed to the offender and their legal representative, the 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 9 (1) (a)-(f), namely 'damaging information'. In relevant cases, the 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.

32.5.3 The 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.

32.5.4 The 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 they provide on release.

32.5.5 After the panel has concluded its questioning of the witness either at a preliminary hearing or in any other proceedings it considers appropriate, the panel must determine whether any further disclosure of the information to the person concerned is required in the interests of justice and, if so, send this information to the person concerned as soon as possible.

32.5.6 If the witness was questioned in a preliminary session of an oral hearing, 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. They must also be given an opportunity to make submissions.

32.5.7 Thereafter, the panel should adjourn to decide how to treat the Rule 9 information. In doing so, it should have regard to the interests of justice and fairness, to the offender, the informant, and the public.

32.5.8 The panel may decide:

- a) that having considered all of the evidence, it is not necessary to attach weight to the Rule 9 information. In this case, this should be recorded in the decision, along with whether the information was material.
- b) that it is necessary in the interests of justice and fairness to appoint a special advocate (see below).
- c) that the Rule 9 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 13 of the 2022 Rules, which allows the chairperson of the panel to waive the general requirement for

confidentiality. In such a case, the 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. The 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 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 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 panel requires to consider whether to appoint a special advocate before reaching this decision. If this is the case, the 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 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 panel had decided should not be disclosed.
- f) If the preliminary session took place in an oral hearing, the decision minute must record any further information disclosed to the prisoner.

## **32.6 Appointment of a special advocate**

32.6.1 The 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.

32.6.2 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 oral hearing there was discussion about the appointment of a special advocate. The panel 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.”*

32.6.3 It is clear from this decision that where the information is material and the panel might attach weight to it, the panel 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 oral hearing decides that a special advocate is not required, it should minute reasons for this decision.

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

32.6.5 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.

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

32.6.7 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.

32.6.8 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.

### **32.7 Proceedings where a special advocate is appointed**

32.7.1 A special advocate can be appointed under rule 9(7). They must be an independent solicitor or advocate.

32.7.2 Where the appointment of a special advocate is necessary, the Board has a list of those eligible and available to undertake the role.

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

32.7.4 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 9; and
- b) a closed session, during which submissions can be made regarding the Rule 9 information in the absence of the offender and their legal representative but in the presence of the special advocate.

32.7.5 The special advocate will be permitted to attend all parts of the hearing (open and closed session) and will see all of the material – including the damaging information not disclosed to the offender or their legal representative in terms of Rule 9. The special advocate will not be involved in the prior procedure but will 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. They will be provided with minutes of the prior hearings, including those which took place outwith the presence of the offender and/or their legal representative. The primary role of the special advocate is to independently assess and make submissions on review of the damaging information and challenge the justification for withholding of the information. 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 9 information should in fact be disclosed to the offender and their legal representative.

32.7.6 The 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.

## **32.8 Decision Minute**

32.8.1 Where the Panel has placed weight on Rule 9 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.

## Section 33 Reconsideration of panel decisions

Date of last review	10 March 2023
Next scheduled review	10 March 2025

### 33.1 Purpose

33.1.1 Rule 19 of the Parole Board (Scotland) Rules 2022 (the Rules) introduced the power for the Board to reconsider the decision of a panel. This rule does not apply to a decision to recommend or direct that the person concerned is released or re-released (rule 19(2)).

33.1.2 The correction of irregularities and errors is covered in rule 18. This broadly covers clerical or factual errors or omissions or other accidental inaccuracy that does not impact on the decision but may require the production of a correction slip to correct the mistake.

### 33.2 Procedure

33.2.1 The chairperson of the Board (or by the Legal Vice Chair appointed by the chairperson for that purpose) may select a decision for reconsideration where they consider there is or may be an administrative or procedural defect affecting that decision.

33.2.2 Reconsideration of a case may be as a result of further submissions made on behalf of the person concerned or as a result of an internal review. Rule 19(4) provides that a decision may only be selected for reconsideration within 20 working days following the date on which the decision was notified to the parties.

33.2.3 The circumstances of every case considered by the Board and its panels and oral hearings are different. The merits of each case will turn on those individual circumstances and the examples below do not limit or bind the powers and duties of the Board in carrying out a reconsideration. These examples are for illustrative purposes only. Examples of where such an internal review may be appropriate include:

- (a) Where the panel or oral hearing making the decision was not provided with documentation or information that was available at the time that the decision was made, and that documentation or information appears to the chairperson of the Board or the Legal Vice Chair to be material to the decision.
- (b) Where there has been a failure to comply with the common law and primary and secondary legislation such as the Prisoners and Criminal Proceedings (Scotland) Act 1993 and the Parole Board (Scotland) Rules 2022.
- (c) Where the reasons in a decision minute do not adequately explain how material controversial issues of fact or law were resolved.
- (d) Where otherwise there has been a lack of procedural fairness.

33.2.4 Rule 19(5) sets out that the arrangements for reconsideration will be those that are necessary in the interests of justice and having regard to the reasons for the decision being selected.

33.2.5 In carrying out the reconsideration the chairperson of the Board or the Legal Vice Chair may take any steps within the powers of the Board and in terms of its duties, and is not limited to the issues which initially prompted the review. Rule 19(6) sets out two primary arrangements for reconsideration although other arrangements can be made:

- a) remitting the case to the panel which previously considered the case for a new decision,
- b) appointing a panel consisting of different members of the Board to consider the case and reach a new decision.

33.2.6 In all cases, the members of the panel that made the original decision being reconsidered shall be advised of the outcome of the review and where the

reconsideration raises matters of general interest to Board members, all Board members may be advised.