

Parole Board for Scotland
Scheme of Delegation and Appointment

The Memorandum of Understanding

The Parole Board for Scotland (the Board) and Scottish Ministers have agreed a Memorandum of Understanding dated 17 February 2017 in relation to governance arrangements for the Board.

Paragraph 3(6) of the Memorandum gives the Chairperson of the Board discretion to appoint up to 2 members to act as Vice Chair/s, for such periods and on such conditions as may be agreed by the Chair and Vice Chair(s). The Chairperson has exercised such discretion and has appointed a Legal Vice Chair and a General Vice Chair.

The Chief Executive of Parole Scotland, the Board's administrative support body is recognised at Part 4 of the Memorandum.

The Coronavirus (Recovery and Reform) (Scotland) Act 2022 ("the 2022 Act")

The 2022 Act (at section 41) adds provisions to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (para 2k(4)(a) to schedule 2) which allow the Chairperson of the Parole Board to set out a Scheme of delegation to cover events where the Chairperson's position is vacant or the Chairperson is unavailable for any reason.

The provisions added by the 2022 Act require that there is a Scheme of delegation for the exercise of **all** of the Chairperson's functions whether they be conferred by the Parole Board (Scotland) Rules 2001 ("the Rules"), by the Parole Board (Scotland) Rules 2022 or otherwise. This is to ensure full continuity both of governance and operations, in unexpected circumstances.

Chairperson Scheme of Delegation

Overall delegation of the Chairperson's duties where there is no Chairperson, or where the Chairperson is unavailable for any reason

If there is no Chairperson of the Board, or the Chairperson is unable to perform their functions for any reason, the Legal Vice Chair of the Board is to perform those functions instead.

If there is no Legal Vice Chair of the Board, or the Legal Vice Chair is unable to perform their functions for any reason, the General Vice Chair of the Board is to perform those functions instead.

If there is no General Vice Chair of the Board, or the General Vice Chair is unable to perform their functions for any reason, the most senior legal member of the Parole Board is to perform those functions instead.

The most senior legal member of the Parole Board means—

- (i) the legal member whose initial appointment to the Parole Board began first, or
- (ii) if more than one legal member falls within sub-paragraph (i), whichever of those legal members is most senior in age.

Delegation and appointment in relation to specific powers

The Rules confer certain powers on the Chairperson of the Board, either explicitly or implicitly, and the Chairperson formally delegates such powers as set out below.

Rule 9 of the Parole Board (Scotland) Rules 2022 is in the following terms:-

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.

The power delegated is that where the Board is required to make a decision prior to an oral hearing as to whether damaging information should not be disclosed to the person concerned under Rule 9 and, if so, the form of the substance of the information which should be disclosed, the decision is not to be made by the panel but instead by the Legal Vice Chair.

Rule 13 of the Parole Board (Scotland) Rules 2022 is in the following terms:-

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

(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.

The Chairperson of the Board delegates the power to direct in terms of Rule 13 (3) (a) to the Legal Vice Chair of the Board.

Rule 18 of the Parole Board (Scotland) Rules 2022 is in the following terms:-

18.— Correction of irregularities and errors

(1) Any irregularity in the proceedings of a panel or, as the case may be, the Board resulting from failure to comply with any provision of these Rules or of any direction under these Rules does not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of a panel or, as the case may be, the Board before a decision has been reached in relation to a case, the panel chairperson or the chairperson of the Board—

(a) must, if they consider that any person may have been prejudiced by the irregularity, and

(b) may, in any other case, give such directions as appear to them to be appropriate to address the irregularity.

(3) Where a document recording a decision under these Rules contains a mistake (including a clerical or factual error or omission or another accidental inaccuracy), the chairperson of the Board, or of the panel which made the decision in question, may issue a written correction slip to correct the mistake.

The Chairperson of the Board delegates the power conferred by Rule 18(2) to the Legal Vice Chair

Rule 19 of the Parole Board (Scotland) Rules 2022 is in the following terms:-

19.— Reconsideration of panel decisions

(1) Subject to paragraph (2) the decision of a panel in relation to a case may be reconsidered under this Rule.

(2) This Rule does not apply to a decision to recommend or direct that the person concerned be released or re-released.

(3) The chairperson of the Board, (or another member or members 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.

(4) A decision may only be selected for reconsideration within 20 working days following the date on which that decision is notified to the parties.

(5) Where a decision is selected for reconsideration, the chairperson of the Board is to make such arrangements for that reconsideration as appear to be necessary in the interests of justice and having regard to the reason the decision was selected.

(6) The arrangements may include, but are not limited to—

(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.

(7) Where a case is reconsidered under the procedure in Part 3 of these Rules, rule 22 applies to a new decision reached following that reconsideration as it applies to any other decision of a casework panel under that procedure.

(8) Where a case is reconsidered under the procedure in Part 4 of these Rules, rules 33 and 34 apply to a new decision reached following that reconsideration as they apply to any other decision of an oral hearing panel under that procedure.

In terms of sub-section (3) the Chairperson of the Board appoints the Legal Vice Chair of the Board as the Member who may select a decision for reconsideration where they consider there is or may be an administrative or procedural defect affecting that decision.

Document Review

This is a dynamic document which will be reviewed by the Chairperson, regularly, and no longer than every 2 years.



Chairperson of the Parole Board for Scotland

13 June 2023

