

Parole  
Board  
for  
Scotland

Annual  
Report  
2022/2023



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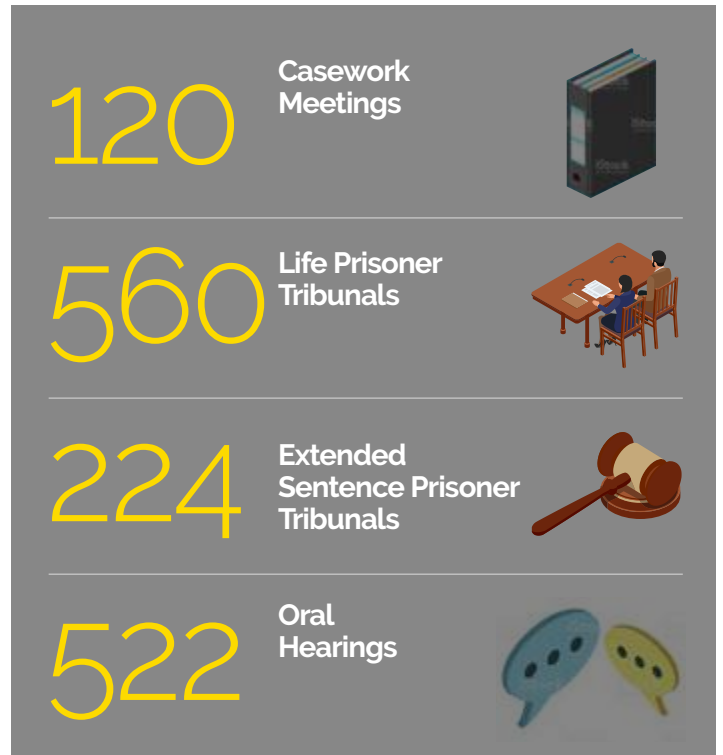


## Life prisoner cases

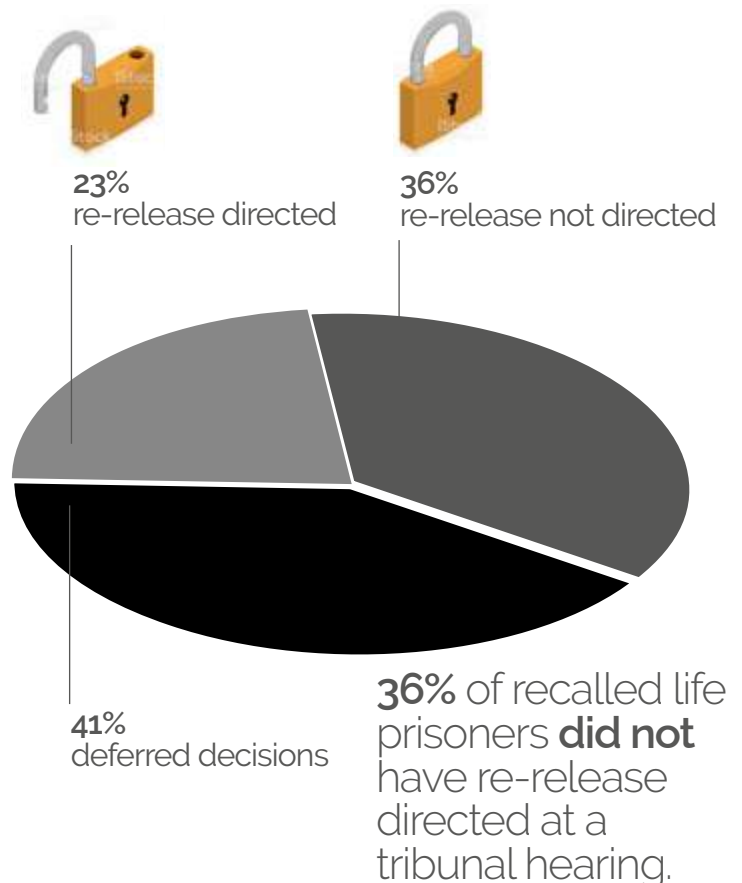
# 560



Of the **560** life sentence tribunal hearings that took place, **the Board did not direct release on 264 occasions.**



## Recalled Life prisoners\*



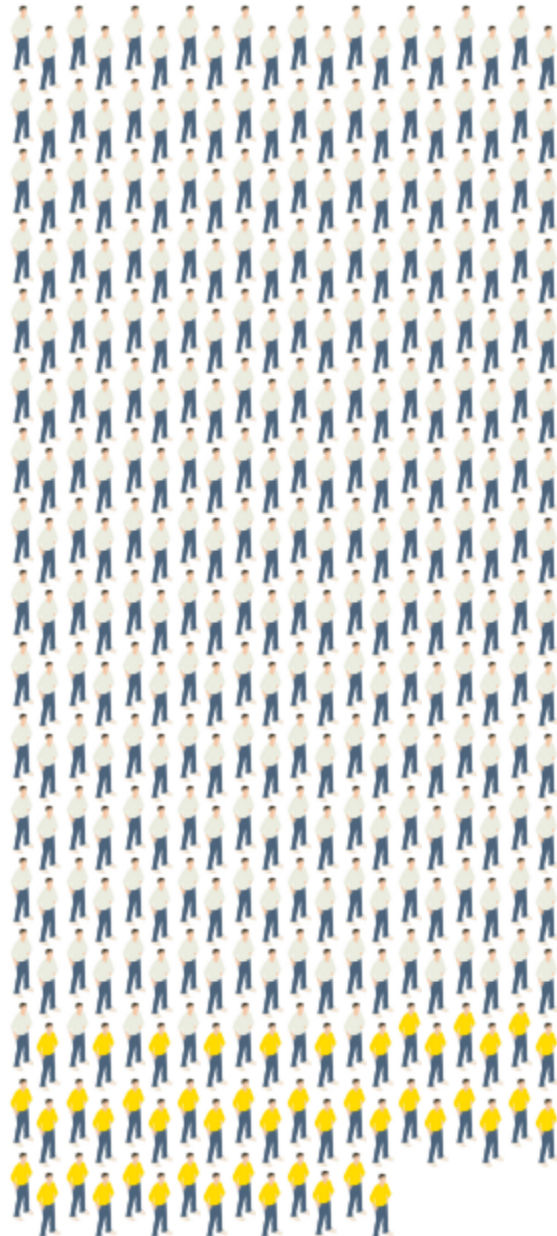
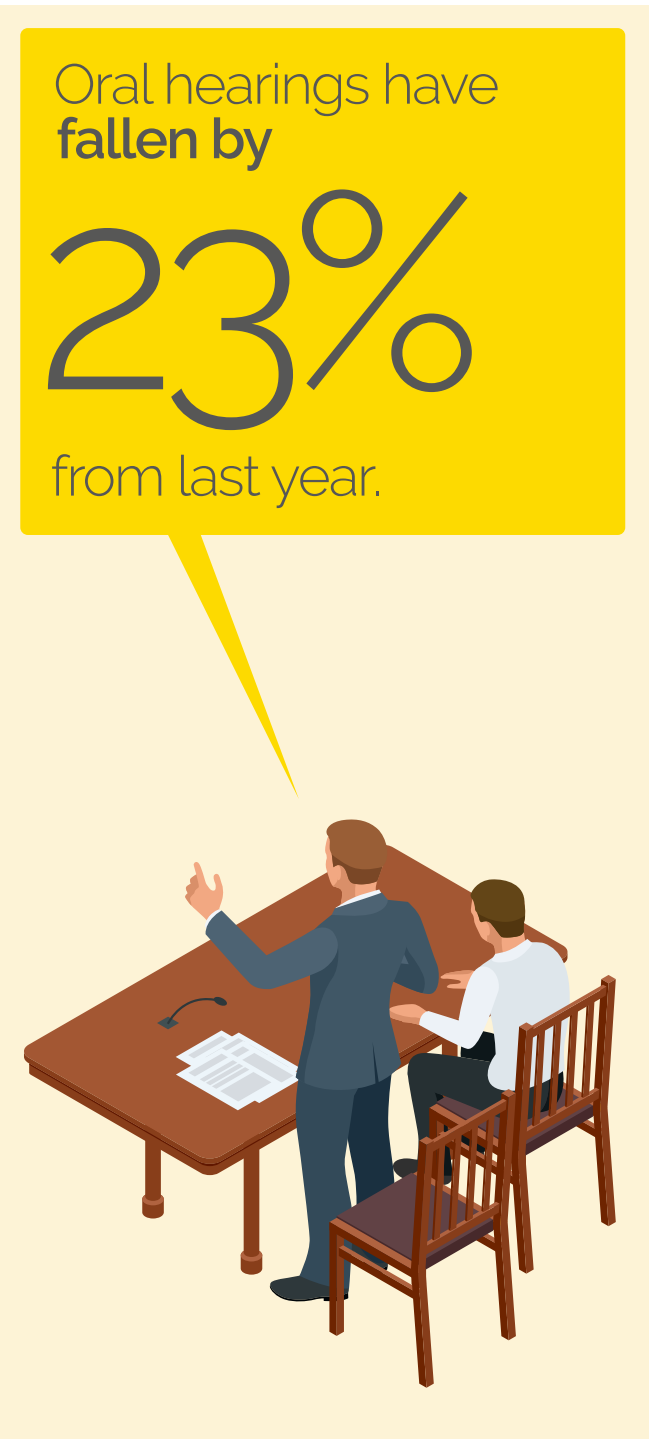
\* Figures are shown on page 31



## Oral hearings

## Life prisoner

# 61



Of the **490\*** life sentence prisoner tribunal hearings that took place, **the Board directed release on 61 occasions.**

\*Does not include immediate re-release considerations

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# Chair's and Chief Executive's

## Chair's and Chief Executive's Joint Foreword

We are pleased and privileged to be able to present this Annual Report on the work of the Parole Board for Scotland - Scotland's Parole Court - during 2022 - 2023. As in previous years the report shows the considerable volumes of work dealt with by the relatively small number of individuals who comprise the Board and its administrative support body, Parole Scotland. The Board has continued to conduct its casework meetings, and the majority of its hearings remotely using audio-visual technology. This operating approach has had no significant impact on case outcomes and has clear time and cost benefits both for the Board and also for those appearing before the Board, for example Social Work witnesses who no longer have to travel to attend. This form of working was adopted as the default method of working in new rules which were made and laid before Parliament in December 2022. The Parole Board (Scotland) Rules 2022 come into force on 1 April 2023 and replace the Parole Board (Scotland) Rules 2001.

Staff in the Board's administrative function continue to work largely from home attending the office for a minimum of one day each week. In addition a number of 'all staff' days were held. We will continue to monitor and evaluate this hybrid working model to ensure it delivers operational effectiveness and staff welfare. Once again our thanks go to the staff of Parole Scotland who have continued to deliver an excellent standard of service and support over the reporting year.

The work which the Board undertakes needs to be, and is, of the highest standard involving difficult and complex decisions which have a direct bearing on the safety of communities across Scotland. It has an important role to play in assisting with the rehabilitation of offenders to return to their communities as law-abiding citizens while also protecting the rights of victims, communities and others who are affected. All of the Board's decisions have to be taken, however, with the fundamental



consideration being whether the risk posed by releasing a prisoner into the community is acceptable and safely manageable. The Board must balance the legitimate interests of the prisoner and victims, community safety and the rights of third parties.

The data for this reporting year is presented slightly differently from that of previous years. A recent review of our reporting methods concluded that a full, expanded breakdown of the entirety of the Board's work within each area would provide greater transparency, and that a consistent reporting approach across all areas would provide greater clarity. Although we have changed our methodology, release data is comparable with previous reports.

The figures set out this year show a variation in the number of life, determinate and extended sentence prisoners dealt with by the Board, as one might expect, with increases in some categories and decreases in others. In particular, Oral Hearings fell by 23 %. It is not clear why this is. Each case is unique and there is no obvious pattern.

There continues to be a high number of Judicial Reviews of Board decisions although very few succeed. This is expensive and time consuming.

We noted last year that, disappointingly, the total number of postponed or adjourned Tribunals and Oral Hearings continues to remain high with very little reduction from the previous reporting year. However, owing to a new administrative process developed by Parole Scotland to ensure that all parties are ready to proceed, the number of late postponements was reduced with an estimated saving of £80,000 in members' fees.

We also noted last year that whilst the Board will seek to continuously improve our own processes in many, if not most, cases postponements or adjournments are due to factors beyond the Board's control. The Board depends on information from a number of sources, including, Social Work, Scottish Prison Service, Police Scotland, Crown Office and Procurator Fiscal Service, Scottish Court Service and sometimes the National Health Service. Problems and delays can arise if such information does not arrive timeously and to an appropriate standard. The Board also has to deal with problems which arise in relation to timeous instruction of legal representation for the prisoner and the time and ability of the prisoner and his or her solicitor to prepare for a Parole Hearing. In essence, that Board is at the end of a chain of processes each link of which has to be effective for the Board to function efficiently.

At the end of 2022, the Board trialled the triaging of dossiers referred by Scottish Ministers. A process was developed where Board Members reviewed dossiers as they were referred to quality assess them and identify problems or gaps in information which might result in deferrals. Early results for this new triaging process have been encouraging and if this trend continues then the Board's Management Group will consider full implementation during 2023 - 2024.

We will also look to work with other organisations involved in the chain of Parole processes to identify and implement improved approaches. There were discussions with the Scottish Government in the hope of being able to carry out an end-to-end review of the parole system but that proved not to be possible. It is anticipated that this may happen in 2023 - 2024.

Changes to the Parole Board Rules effective from [March 2021](#) allowed the Board to approve the attendance at Oral Hearings of victims as observers. Parole Scotland's Victims' Team support such observations, taking a trauma informed/skilled approach. All staff in Parole Scotland were trained in Trauma Informed Practice and members of the Victims Team in Trauma Skilled Training. Further training for the Victims Team will take place in the coming year. The team have successfully facilitated 85 hearings for registered victims since the teams creation and rollout of the Safe Space Initiative in 2021, showing that we are successfully meeting the needs of victims across Scotland. 50 of these engagements were carried out within this reporting year. Guidance for members was produced on conducting Oral Hearings with an observer present and all Board members attended a briefing session.

During the year we have welcomed a number of new members to the Board who were appointed by Scottish Ministers in March 2023:

Beverley Atkinson	Legal Member
David Bell	Legal Member
Emma Hannay	Legal Member
Sheriff Kevin McCarron	Legal Member
Lesley Mulholland	Legal Member
Darren Stevenson	Legal Member
Patricia Coia	General Member
Emma Jardine	General Member
Scott Keir	General Member
James Maybee	General Member
Hazel Nicolson	General Member
Ian Wight	General Member

We would like to take this opportunity to thank, not only members and all of the hard working staff in Parole Scotland for their commitment and support but also those many individuals and agencies, both statutory and voluntary, on whose services and expertise the Board relies for evidence, information and for support to inform the vital decisions which it takes.

Finally, we would also like to express our particular thanks to Patricia Pryce, whose appointment to the Board came to an end during this reporting period.



**John Watt**  
Chair, Parole Board for Scotland



**Colin Spivey**  
Chief Executive,  
Parole Board for Scotland



## About the Parole Board

The Parole Board for Scotland was first constituted by section 59(1) and Schedule 2 of the Criminal Justice Act 1967 to advise the Secretary of State for Scotland on the early release on licence and recall of prisoners in terms of that Act. Since then in excess of 10 statutes have impacted directly on the Board's functions and roles including the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Section 20(1) of the 1993 Act provides that there shall continue to be a body known as the Parole Board for Scotland to discharge the functions set out in the 1993 Act.

A significant watershed was the Convention Rights (Compliance) (Scotland) Act 2001. Until then the Board carried out an advisory role as a paper exercise.

The 2001 Act amended the 1993 Act and radically altered the system of parole in Scotland.

Part 1 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").

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").

# About the Parole Board OTI



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.

Like Parole Boards and their equivalents in New Zealand, Australia, South Africa, the United States, Canada, Jersey, Guernsey, the Isle of Man, Ireland North and South, England and Wales, Western Europe and Scandinavia, the Board is entirely independent from the country's court system.

Scottish Ministers have now confirmed that they consider that the Board and Tribunals of the Board operate in terms of the Parole Board (Scotland) Rules 2001 and numerous court decisions, 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. Their role is at least partly inquisitorial in nature but they can be seen as Scotland's parole courts.

The Board and tribunals of the Board are not "courts" for any of the purposes of the Judiciary and Courts (Scotland) Act 2008 other than the appointment provisions set out in Part 2 Chapter 3 and in particular are not listed as a court in Section 2 (6).

The Board's main aim is to ensure that the risk posed by a prisoner, if released, can be safely managed in the community. The prisoner may serve the remainder of their sentence in the community under the supervision of a social worker. It is not the responsibility of the Board

to consider questions of punishment and general deterrence.

The Board can only consider cases referred to it by Scottish Ministers who are in terms of the 2001 Rules, parties to Tribunals.

The Board only grants release in cases where the level and nature of risk are deemed to be manageable. This decision is informed by oral or written evidence in the form of witness evidence or, usually, reports contained in dossiers. The content of the dossier referred to the Board by Scottish Ministers includes, wherever practical, documents listed in the schedule to the Parole Board 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.

The tests which the Board and its Tribunals 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 the Member's guidance manual which can be found on the Board's website.

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.

Relations with Scottish Ministers are regulated by a Memorandum of Understanding which includes reference to governance processes. There is, however, no statutory basis for

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. It is hoped that firm progress can be made quickly.

The Board's supporting administrative body, Parole Scotland, comprises civil servants informally assigned from the wider civil service in Scotland. Parole Scotland occupies Scottish Government premises.

The Board has no independent budget but receives funding from the Justice budget monitored by Justice Directorate civil servants. The Board is also required to rely on 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.

While no doubt very necessary, neither the Board nor Parole Scotland has a part in preparing prisoners for the Parole process. With the introduction of the Victims Team, victims are guided through the process of parole and given a detailed breakdown of how to compose representations (with referral to a victim support worker if needed) and given key information on what to expect during an observation (if they are eligible, and choose to attend). It is right that the Board, as a court, should not be involved but there can be significant negative impact on the work of the Board because prisoners are not ready to proceed at hearings.

Everyone involved in the Parole System works very hard to make it work. We will continue to advocate for, and to seek to change and improve whilst providing the best service we can. We confidently expect that other agencies in the parole process will play a full part with the Board in driving necessary change in a reasonable time scale.

### **Types of Sentence**

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**

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. Short Term Sex Offenders (STSO) are released on licence, the conditions of which are set by the Parole Unit of the Scottish Prison Service on behalf of Scottish Ministers, therefore the Board's involvement in these cases is to consider grounds for recall to custody or re-release as appropriate.

### **Long Term Determinate Sentence Prisoners**

For offenders sentenced to determinate sentences of four years or more, the Parole Board is invited to recommend to Scottish Ministers whether the individual offender should be released on licence at the half way point of their sentence (the Parole Qualifying Date). 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 up to 12 month intervals until the offender reaches their Earliest Date of Liberation (the two thirds point of their sentence or 6 months before the expiry

of the sentence depending on when they were sentenced) at which point the Scottish Ministers are statutorily required to release the prisoner into the community on licence.

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.

### **Extended Sentence Prisoners**

The Board will deal with extended sentence prisoners in one of two ways. The first is where a short custodial term is imposed, but when taken with the extension period the total sentence is four years or more. This type of case will be referred to the Board to recommend licence conditions only.

If the custodial term is four years or more, the Board would deal with these cases as for long term determinate sentence prisoners.

All extended sentence prisoners are released on licence and subject to recall consideration for the total period of the extended sentence (i.e. the custodial term and the extension period).

### **Life Sentence Prisoners**

Life sentence prisoners are reviewed, at the end of the punishment part of their sentence, for possible release on life licence by the Board, sitting as a Life Prisoner Tribunal. 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.

It is for the Board 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 Tribunal is required, by law, to fix the date when it will next consider the prisoner's case not later than two years after the date of the decision to decline to direct release.

### **Orders for Lifelong Restriction Prisoners (OLRs)**

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 Board is required to have regard to the Risk Management Plan which has been approved by the Risk Management Authority.

### **Recall of Prisoners for Breach of Licence**

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.

Following a referral by Scottish Ministers, the Board is required to consider the recall to custody of the following sentence types:

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

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

### **Other Post Release Considerations**

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.

### **Re-release Following Recall**

For those cases where 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.

The way in which the Board deals with these cases depends on the sentence type. For re-release of STSO or long term determinate sentence prisoners, the Board will consider these cases at a casework meeting. Different members of the Board consider re-release from the members who considered an individual's recall to ensure fairness.

Life sentence prisoners and prisoners subject to an OLR will be considered at a Tribunal.

For re-release of extended sentence prisoners, a Tribunal of the Board requires to be held if the prisoner is recalled to custody during 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**

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 cases sentenced to four years or more detention, and for setting licence conditions for all C&YP cases sentenced to less than four years detention. All C&YP cases are liable to be recalled to custody in the same way as long term adults.

### **Oral Hearings**

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**

The Board provides advice to Scottish Ministers on individual cases and these recommendations are binding on Ministers in almost all matters. Decisions on compassionate release lie with Scottish Ministers.

### **Home Detention Curfews**

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.

### **Deportation**

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 not 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.

### **Advice to Scottish Ministers**

It may be worth mentioning that it is the duty of the Board to advise the Scottish Ministers with respect to *any* matter referred to it by them which is connected with the early release or recall of prisoners. So far as can be ascertained, Scottish Ministers have not sought such advice during the period of the report.

### **Tests for Release**

There are statutory tests for release in the case of life sentence prisoners and recalled extended sentence prisoners. The lifer test is "Before the Tribunal can direct release, it must be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined". The recalled extended sentence prisoner test is "the Board shall not direct release unless it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined".

There are no statutory tests for release otherwise and the test which has been applied for many years is that "the Board can recommend release where it is satisfied that such risk as the prisoner poses can be safely managed in the community". The origin of the test is not entirely clear and it has never been tested in court.

Chapter One

# The year's Work 01.2



The tables below provide statistical details of the various cases considered by the Board during the period 1 April 2022 – 31 March 2023. Comparable historical data is contained in Appendix A.

### CASES CONSIDERED UNDER PART III\* OF THE PAROLE BOARD (SCOTLAND) RULES 2001

#### Determinate sentence prisoners - first review for release

##### Casework meetings

Recommendation - release	20
Recommendation - no release	157
Oral hearing required	82
Deferrals	55
Withdrawals	3
Other decisions	0
<b>Total considerations</b>	<b>317</b>

##### Oral hearings

Recommendation - release	30
Recommendation - no release	61
Deferrals	59
Withdrawals	4
Other decisions	0
<b>Total considerations</b>	<b>154</b>

\* Cases referred to the Board under Part III of the 2001 Rules are considered by way of a casework meeting, on the basis of the dossier alone, with the option to hold an oral hearing if the interests of justice require it.



## Determinate sentence prisoners - subsequent review for release

### Casework meetings

Recommendation - release	17
Recommendation - no release	211
Oral hearing required	107
Deferrals	44
Withdrawals	2
Other decisions	0
<b>Total considerations</b>	<b>381</b>

### Oral hearings

Recommendation - release	21
Recommendation - no release	85
Deferrals	58
Withdrawals	4
Other decisions	4
<b>Total considerations</b>	<b>172</b>

## Determinate sentence prisoners - consideration for re-release

### Casework meetings

Direction - release	3
Direction - no release	50
Oral hearing required	21
Deferrals	7
Withdrawals	4
Other decisions	0
<b>Total considerations</b>	<b>85</b>

### Oral hearings

Direction - release	4
Direction - no release	15
Deferrals	13
Withdrawals	3
Other decisions	0
<b>Total considerations</b>	<b>35</b>

## Determinate sentence prisoners - review for release following recall

### Casework meetings

Recommendation - release	1
Recommendation - no release	18
Oral hearing required	18
Deferrals	4
Withdrawal	0
Other decisions	0
<b>Total considerations</b>	<b>41</b>

### Oral hearings

Recommendation - release	1
Recommendation - no release	14
Deferrals	7
Withdrawals	0
Other decisions	1
<b>Total considerations</b>	<b>23</b>

## Extended sentence prisoners - first review for release

### Casework meetings

Recommendation - release	0
Recommendation - no release	97
Oral hearing required	22
Deferrals	23
Withdrawals	3
Other decisions	0
<b>Total considerations</b>	<b>145</b>

### Oral hearings

Recommendation - release	0
Recommendation - no release	22
Deferrals	7
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>29</b>

## Extended sentence prisoners - subsequent review for release

### Casework meetings

Recommendation - release	0
Recommendation - no release	122
Oral hearing required	44
Deferrals	28
Withdrawals	2
Other decisions	0
<b>Total considerations</b>	<b>196</b>

### Oral hearings

Recommendation - release	4
Recommendation - no release	40
Deferrals	17
Withdrawals	3
Other decisions	0
<b>Total considerations</b>	<b>64</b>

## Extended sentence prisoners - consideration for re-release

### Casework meetings

Direction - release	0
Direction - no release	7
Oral hearing required	10
Deferrals	5
Withdrawals	3
Other decisions	0
<b>Total considerations</b>	<b>25</b>

### Oral hearings

Direction - release	2
Direction - no release	11
Deferrals	4
Withdrawals	0
Other decisions	1
<b>Total considerations</b>	<b>18</b>

## Extended sentence prisoners - review for release following recall

### Casework meetings

Recommendation - release	1
Recommendation - no release	15
Oral hearing required	3
Deferrals	3
Withdrawals	1
Other decisions	0
<b>Total considerations</b>	<b>23</b>

### Oral hearings

Recommendation - release	0
Recommendation - no release	4
Deferrals	2
Withdrawals	1
Other decisions	0
<b>Total considerations</b>	<b>7</b>

## Short-term sex offenders (STSO) - consideration for re-release

### Casework meetings

Direction - release	0
Direction - no release	20
Oral hearing required	14
Deferrals	7
Withdrawals	4
Other decisions	0
<b>Total considerations</b>	<b>45</b>

### Oral hearings

Direction - release	0
Direction - no release	10
Deferrals	3
Withdrawals	1
Other decisions	1
<b>Total considerations</b>	<b>15</b>



### Short-term sex offenders (STSO) - review for release following recall

#### Casework meetings

Recommendation - release	0
Recommendation - no release	0
Oral hearing required	1
Deferrals	0
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>1</b>

#### Oral hearings

Recommendation - release	1
Recommendation - no release	0
Deferrals	1
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>2</b>

#### Other considerations

Recommendation - release licence conditions	178
Licence amendment requests	123
Termination of supervision requests	12
Compassionate release requests	5
Home Detention Curfew (HDC) recall appeals	3
Early review requests	1
<b>Total considerations</b>	<b>322</b>

**CASES CONSIDERED UNDER PART IV\* OF THE PAROLE BOARD (SCOTLAND) RULES 2001****Extended sentence prisoners - consideration for re-release****Tribunal hearings**

Direction - release	<b>3</b>
Direction - no release	<b>36</b>
Deferrals**	<b>35</b>
Withdrawals	<b>1</b>
Other decisions	<b>0</b>
<b>Total considerations</b>	<b>75</b>

**Extended sentence prisoners - review for release following recall****Tribunal hearings**

Direction - release	<b>9</b>
Direction - no release	<b>89</b>
Deferrals	<b>50</b>
Withdrawals	<b>1</b>
Other decisions	<b>0</b>
<b>Total considerations</b>	<b>149</b>

\* Cases referred to the Board under Part IV of the 2001 Rules are considered by way of a tribunal hearing.

\*\* referred to as postponed or adjourned in previously published Annual Reports

### Life sentence prisoners - first review for release

#### Tribunal hearings

Direction - release	8
Direction - no release	26
Deferrals	13
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>47</b>

### Life sentence prisoners - subsequent review for release

#### Tribunal hearings

Direction - release	32
Direction - no release	162
Deferrals	109
Withdrawals	5
Other decisions	0
<b>Total considerations</b>	<b>308</b>

### Life sentence prisoners - consideration for re-release

#### Tribunal hearings

Direction - release	16
Direction - no release	25
Deferrals	29
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>70</b>

### Life sentence prisoners - review for release following recall

#### Tribunal hearings

Direction - release	21
Direction - no release	51
Deferrals	60
Withdrawals	3
Other decisions	0
<b>Total considerations</b>	<b>135</b>

### Order for Lifelong Restriction (OLR) prisoners - first review for release

#### Tribunal hearings

Direction - release	0
Direction - no release	17
Deferrals	6
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>23</b>

### Order for Lifelong Restriction (OLR) prisoners - subsequent review for release

#### Tribunal hearings

Direction - release	1
Direction - no release	98
Deferrals	47
Withdrawals	1
Other decisions	0
<b>Total considerations</b>	<b>147</b>

### Order for Lifelong Restriction (OLR) prisoners - consideration for re-release

#### Tribunal hearings

Direction - release	0
Direction - no release	0
Deferrals	0
Withdrawals	1
Other decisions	0
<b>Total considerations</b>	<b>1</b>

### Order for Lifelong Restriction (OLR) prisoners - review for release following recall

#### Tribunal hearings

Direction - release	0
Direction - no release	7
Deferrals	4
Withdrawals	0
Other decisions	0
<b>Total considerations</b>	<b>11</b>

## CASES CONSIDERED FOR REPORTED BREACH OF LICENCE CONDITIONS

### Determinate sentence prisoners

Decision - recall to custody	79
Decision - issue warning letter	31
Decision - no action	2
Deferrals	7
Withdrawals	0
<b>Total considerations</b>	<b>119</b>

### Extended sentence prisoners

Decision - recall to custody	68
Decision - issue warning letter	41
Decision - no action	0
Deferrals	9
Withdrawals	0
<b>Total considerations</b>	<b>118</b>

### Short-term sex offenders (STSOs)

Decision - recall to custody	44
Decision - issue warning letter	20
Decision - no action	0
Deferrals	8
Withdrawals	0
<b>Total considerations</b>	<b>72</b>

### Life sentence prisoners

Decision - recall to custody	34
Decision - issue warning letter	23
Decision - no action	2
Deferrals	4
Withdrawals	0
<b>Total considerations</b>	<b>63</b>

### Order for Lifelong Restriction (OLR) prisoners

Decision - recall to custody	1
Decision - issue warning letter	1
Decision - no action	0
Deferrals	0
Withdrawals	0
<b>Total considerations</b>	<b>2</b>

### Summary of Determinate Sentence Cases Where Release Recommended – by Offence

	Violence	Drugs	Sexual	Property	Other	Total
<b>10 years or over</b>	2	0	2	0	3	7
<b>Under 10 years</b>	23	25	19	3	11	81
<b>Total</b>	25	25	21	3	14	88

Category of Offence	Offences Include
<b>Violence</b>	Culpable Homicide, Attempted Murder, Assault to Severe Injury etc. Assault and Robbery.
<b>Drugs</b>	Contravention of the Misuse of Drugs Act and Customs and Excise Management Act.
<b>Sexual</b>	Rape, Attempted Rape, Sodomy, Incest, Clandestine, Injury, Lewd and Libidinous Practices.
<b>Property</b>	Theft, Conspiracy to Rob, Embezzlement.
<b>Other</b>	Road Traffic Act, Fire-Raising.

As can be seen from the following table, over the previous 12-month period there has been a slight increase in the proportion of determinate sentence prisoners who have opted out of the process. In addition, 39 extended sentence prisoners' self-rejected from having a further review following recall.

Year	2020/2021	2021/2022	2022/2023
Eligible	925	1115	1037
Opting Out	77	103	103
%	8	9	10



### Non-parole licences

The Prisoners and Criminal Proceedings (Scotland) Act 1993 requires a determinate or extended sentence prisoner to be released on licence, if they have not already been released and recalled to custody, when they reach their Earliest Date of Liberation (EDL). The term "non-parole" is used to describe such a licence, for which the Board will recommend conditions to Scottish Ministers.

During 2022/23, there were **120** determinate or extended sentence considerations where release was not recommended and at the same time non-parole licence conditions were recommended. There were a further **178** considerations solely for the purpose of recommending non-parole licence conditions.

### Orders for Lifelong Restriction (OLRs)

An Order for Lifelong Restriction is a form of indeterminate sentence, which differs from a life sentence in that it has an additional element of lifelong risk management.

During 2022/23, there were **182** considerations of OLR prisoners by way of a tribunal hearing. Of those, **1** saw release on licence directed and licence conditions recommended to Scottish Ministers.

### Children and Young People

The Board has responsibility for considering the cases of children and young people sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995.

During 2022/23, there was **1** consideration of a child or young person.

### Oral hearings

An oral hearing takes place in Part III cases which would otherwise be considered on the basis of a dossier, where the Board considers that such a hearing is in the interests of justice, e.g. where evidence is required from witnesses.

During 2022/23, there were **522** considerations by way of an oral hearing.

### Preliminary hearings

A preliminary hearing takes place in cases which require certain matters to be resolved prior to the Board considering the case.

During 2022/23, there were **38** considerations by way of a preliminary hearing.

# Progress Report

## 01.3



This year saw preparation for the introduction of [The Parole Board \(Scotland\) Rules 2022](#), which were restructured to align some common procedures in Part 2; and for previous Parts III and IV cases. The Rules created a new Part 3 for casework panels and a new Part 4 to provide procedures relating solely to oral hearing panels.

Many of the rules have been redefined and renumbered, and there are several additions such as rule 26 - this covers situations where a prisoner has no representative, and the panel considers that they lack capacity to agree to one being appointed on their behalf; in those circumstances the panel may make arrangements to secure representation. This is similar to the appointment of a curator ad litem by the Mental Health Tribunal. The new rule 31 will require the prisoner (or their representative) to send to the oral hearing panel a statement indicating the extent to which they are prepared for the hearing, not later than 10 days before it takes place. It authorises the panel chairperson to postpone the hearing if they consider it necessary to enable the prisoner to be fully prepared.

### Decision-making

The Board's decision-making process is rigorous, fair, defensible, and independent. The Board makes fully informed decisions based on all the evidence available to it. Each case is subject to the statutory test for release, with public safety central to every decision made. In comparison to the previous year, the number of cases considered by the Board decreased slightly by 5 % in 2022-2023.

### Our people

The Board is committed to being an inclusive, open, and diverse organisation which reflects the community it serves. Members come from a variety of backgrounds and experiences and are appointed by Scottish Ministers after a rigorous selection process conducted by the Judicial Appointments Board of Scotland (JABS) to ensure transparency, objectivity, and fairness. In March 2023, following a successful recruitment campaign, 6 General members and 6 Legal Chairs were appointed.

The Board continued to focus on professional development of its Members this year. Three training events were organised for Members. The topics covered included Test for Release, Risk Management Plans, SPS Offence Focused Interventions, Parole Board (Scotland) Rules 2022 and Women Offenders.

The Board continues to strive to create a more diverse organisation which allows everyone to be themselves at work, knowing they will be treated fairly and supported to achieve their potential. It is committed to working in collaboration with Parole Scotland staff on the decisions and issues that affect them.

### Working arrangements

The Parole Board Management Group (PBMG) met, via MS Teams six times in 2022-23 to discuss the Board's operational performance and oversee the implementation of the Board's business plan.

PBMG members during 2022-23 were:

John Watt - Parole Board Chair  
 Ian Bryce - Parole Board Member, Vice Chair  
 George Connor - Parole Board Member, Vice Chair

Fiona Grant, Parole Board Member  
Jackie Peters, Parole Board Member

Colin Spivey - Chief Executive  
Elizabeth Thomson - Deputy Chief Executive

A review of the Board's risk management was undertaken during the year which resulted in the introduction of a more robust risk mechanism and a full revision of the corporate risk register.

The following corporate risks were actively managed during the year:

- Casework Management System
- Records management
- Budget constraints
- Corporate governance

PBMG review the Board's corporate risk register quarterly and the Senior Management Team, with support from an established internal Risk Management Team, review the operational and corporate risks monthly.

In December 2022 the Parole Board, along with Parole Scotland, introduced several new processes in a bid to tackle the increasing trend of deferrals. Early indications suggest that the new "triage" process along with a pilot testing the effectiveness of the Statement of Preparation, ahead of implementation in the new Rule, will play a significant part in addressing this.

### **Technology**

The Board continues to work completed electronically resulting in a significant reduction in the cost of consumables. Although this has been standard practice since Covid, Rule 16 of The Parole Board (Scotland) Rules 2022 will formally reverse the presumption in the old Rules so that the presumption is that proceedings will take place by Livelink. In person hearings may however still take place either at the Board's discretion or on the application of a party. This has result also contributed to a significant saving in terms of members travel and associated costs.

### **Raising awareness**

The Board continued to raise awareness of what we do and how we contribute to the wider Scottish justice context with partners and the public through remote attendance at several meetings and events across the country throughout the year. This included a series of sessions delivered to Local Authority Social Work teams, presentations to professional staff with SPS establishments and criminal law and public sector conferences. Recognising the importance of continuing to strengthen the Board's profile, the delivery method and format of the outreach sessions are a combination of in person and via MS Teams.

The Board recognises the important role legal professionals have in ensuring prisoners are supported during the parole process, and its Solicitor User Group met two times during the year to provide a platform for the sharing of key information, predominately around the implementation of the Parole Board (Scotland) Rules 2022 and discussion of any identified operational issues.

As noted in the Foreword, a number of victim related activities have been carried out during 2022/2023.



# Full Membership OT14

## Board Membership

Members come from a diverse range of professional backgrounds which includes psychologists, social workers and professionals from mental health services and the criminal justice system.

The Board is committed to continuous personal development and training its members to recognise and understand equality issues to ensure that there is no discrimination when considering offenders for parole. Once appointed, members receive extensive training and development to ensure they are appropriately equipped with the skills and knowledge to undertake their role effectively. Further information about our membership is available on our website [scottishparoleboard.scot](http://scottishparoleboard.scot)

## Gender Balance of Board

Member	Male 	Female 
Chair	1	-
General	10	15
Legal	9	11
Psychiatrist	-	1
Judicial	1	-
<b>Total</b>	<b>21</b>	<b>27</b>

Chapter Three

# Case Studies

## 015



## Judicial Reviews

This year's annual report contains a case study of a judicial review against the Board which concluded during the reporting year.

### Case Study

The submission for the petitioner was that the procedure adopted by the tribunal in reaching its decision was unfair. This was claimed on four separate grounds. Firstly that the tribunal had acted unfairly by taking into account unproven allegations which had been rejected by a jury. Secondly, that the tribunal had provided inadequate reasons for its decision by not being clear about its position regarding unproven allegations and by linking the use of an illicit painkiller to serious organised crime and the risk to "life and limb". Thirdly, that the Board had acted unfairly by not disclosing its policy on drug use in custody which was argued because the Board had applied similar reasoning elsewhere. Fourthly, that the Board had acted unfairly by not giving clear notice of its criteria for the assessment of risk in relation to unproven allegations and that any self-imposed limitations on its discretion in such cases required to be published.

The offender had been recalled to prison several years previously following allegations of further offending, specifically charges of rape. They were also considered to have been staying outwith their approved address. They were subsequently found not guilty on one charge, and the second was found not proven. In terms of their conduct in prison, it was noted that recently they had been removed from consideration for progression after accruing two misconduct reports. One related to a failed drug test, and the second related to being found in possession of a bottle of liquid which appeared to be urine intended to be used to circumvent SPS drug testing procedures.

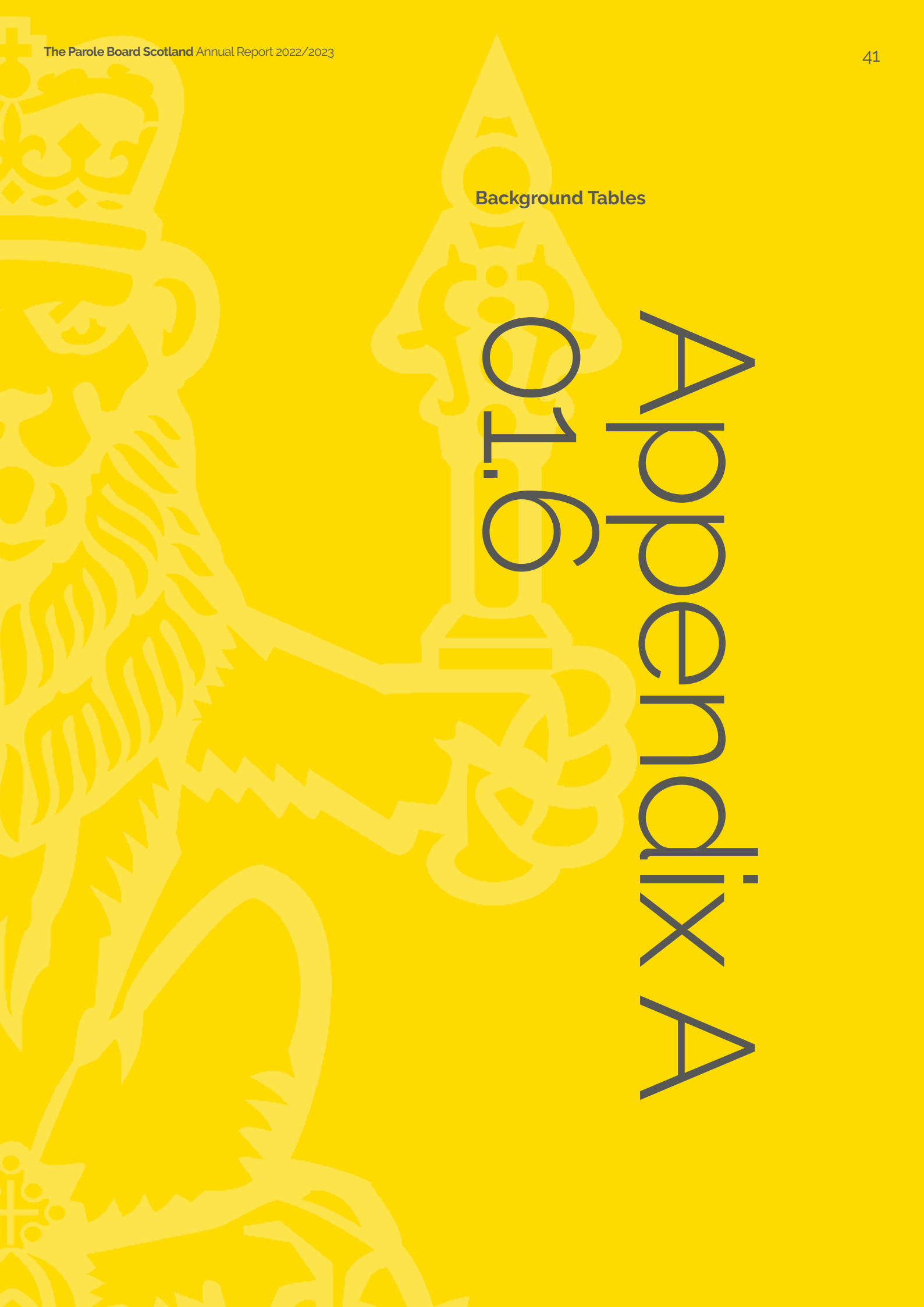
The Court held that the tribunal had not applied an undisclosed policy in relation to the use of unproven allegations when assessing risk. It found nothing in the tribunal's reasoning to suggest that it was purporting to apply such a policy and accepted the assurance of senior counsel for the Board that no such policy existed. The Court also rejected the contention that the terms of the decision demonstrated the application of a policy in relation to drug use in prison. In relation to the unproven allegations which had been rejected by a jury, the Court held that there had been insufficient separation made between the established or undisputed facts from which legitimate inferences may be drawn and the allegations which had been rejected as not proven. In particular, the Court drew attention to paragraphs in the tribunal's minute relating to the evidence of social workers and how the tribunal had used that evidence in its decision making. In relation to drug misuse, the Court held that the reasons provided regarding the offender's drug misuse indicated that the tribunal considered that this constituted involvement in serious organised crime and therefore of posing a risk of serious harm to the public. Further, the Court considered that this logical progression did not stand up to scrutiny and fell below an acceptable standard of reasoning. The Court held that the two latter aspects of the tribunal's reasoning constituted core elements of the tribunal's decision and that the decision must be reduced.



Background Tables

# Appendix A

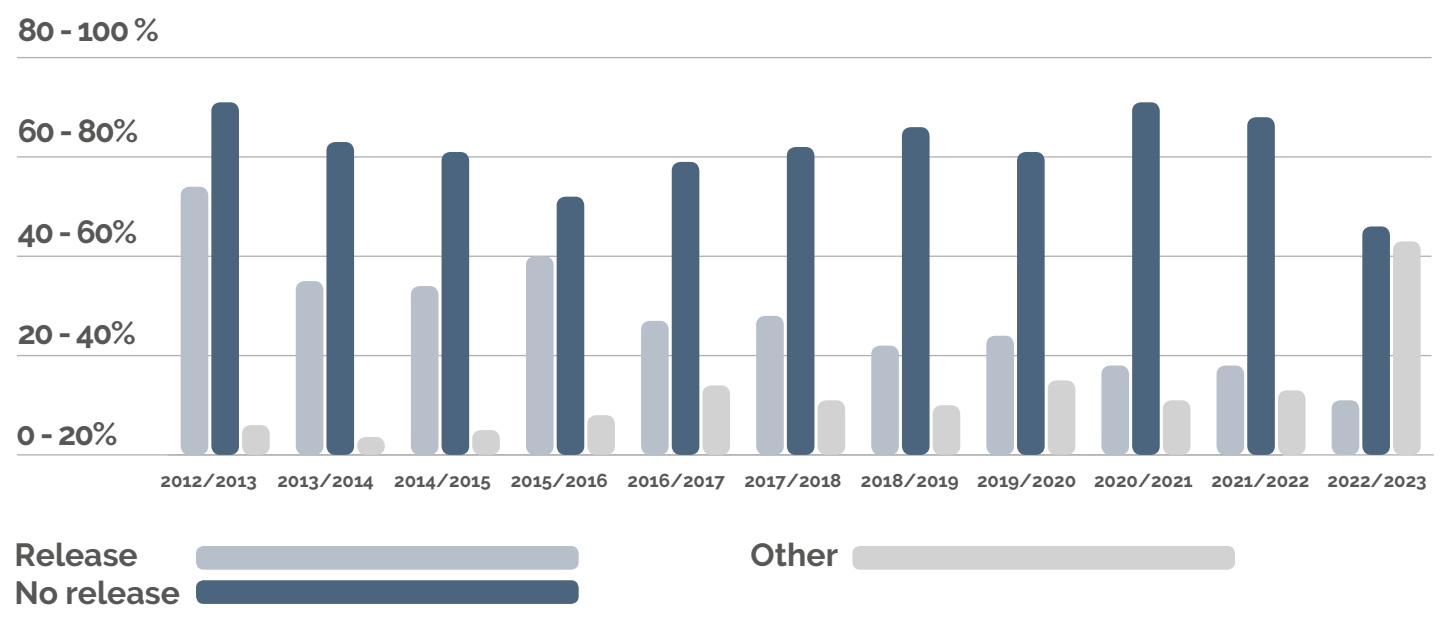
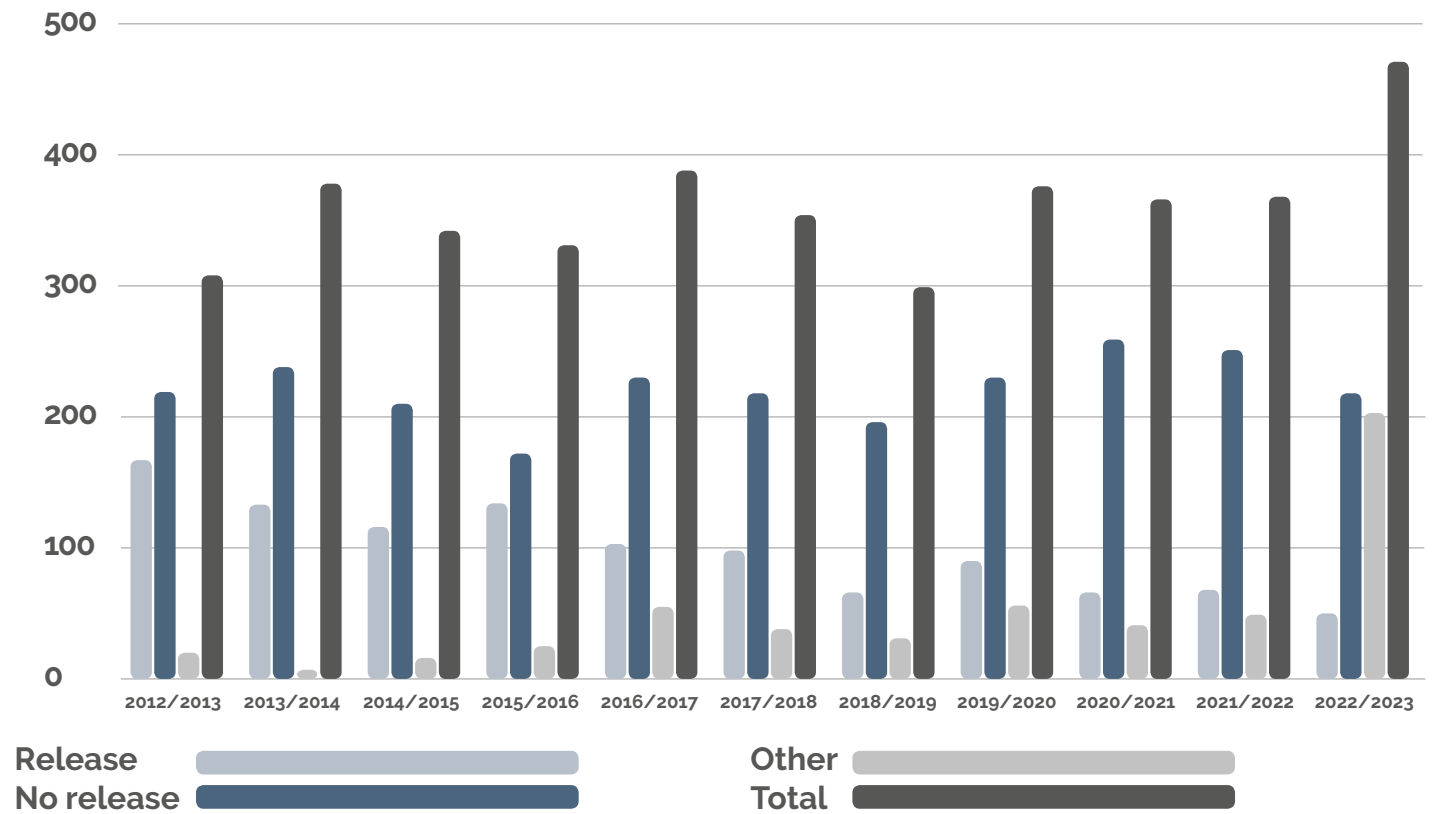
## O1.6



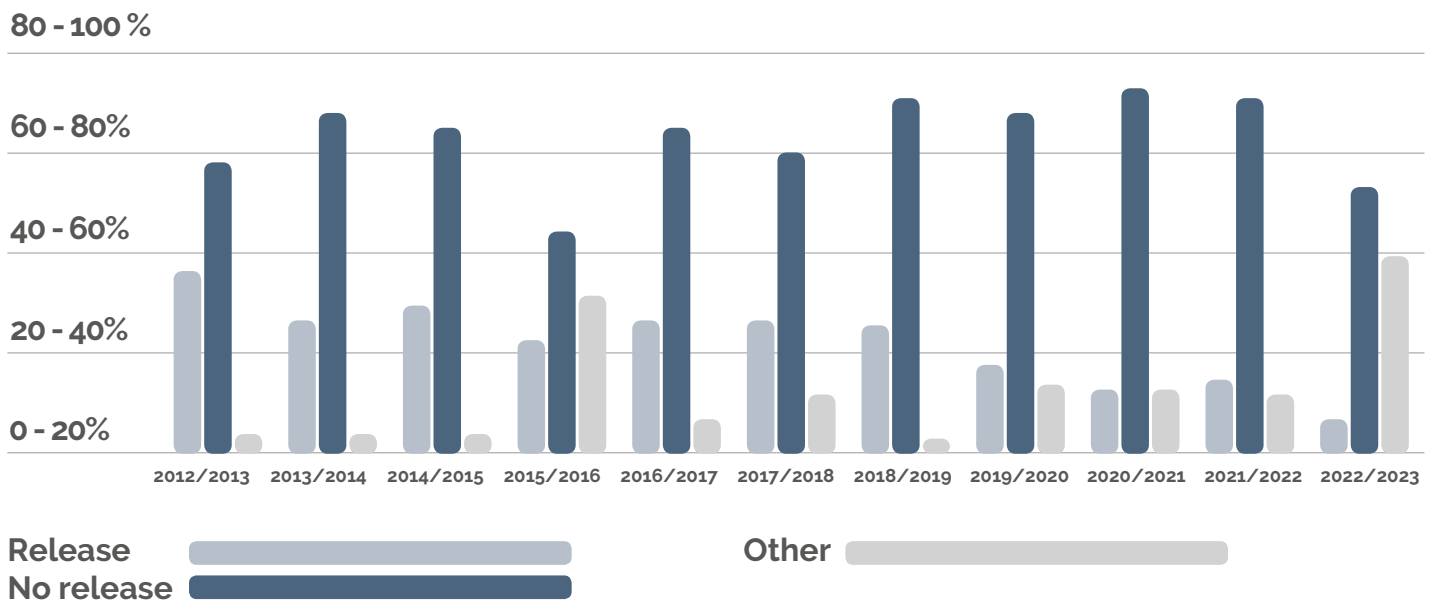
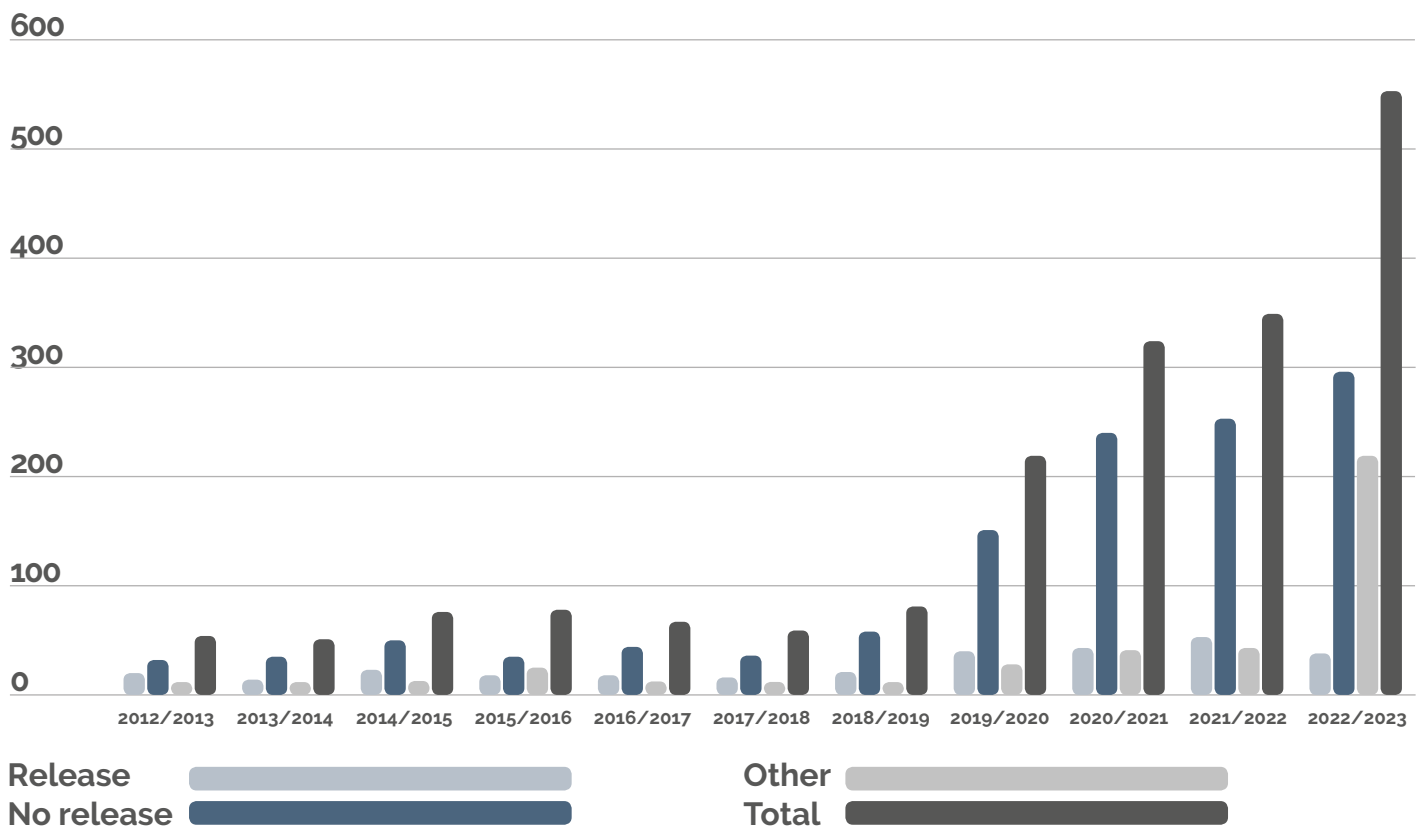
Year of Release	Time Spent in Custody by Persons First Released from Life Sentences									Total
	Under 7	7 - 8	8 - 9	9 - 10	10 - 11	11 - 12	12 - 13	13 - 14	over 14	
2020-21	0	0	0	0	0	2	3	3	13	21
2021-22	0	0	0	0	0	2	1	5	25	33
2022-23	0	0	0	0	0	2	1	3	34	40
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>5</b>	<b>11</b>	<b>72</b>	<b>94</b>

Note 1 does not include those recalled to custody and subsequently re-released.

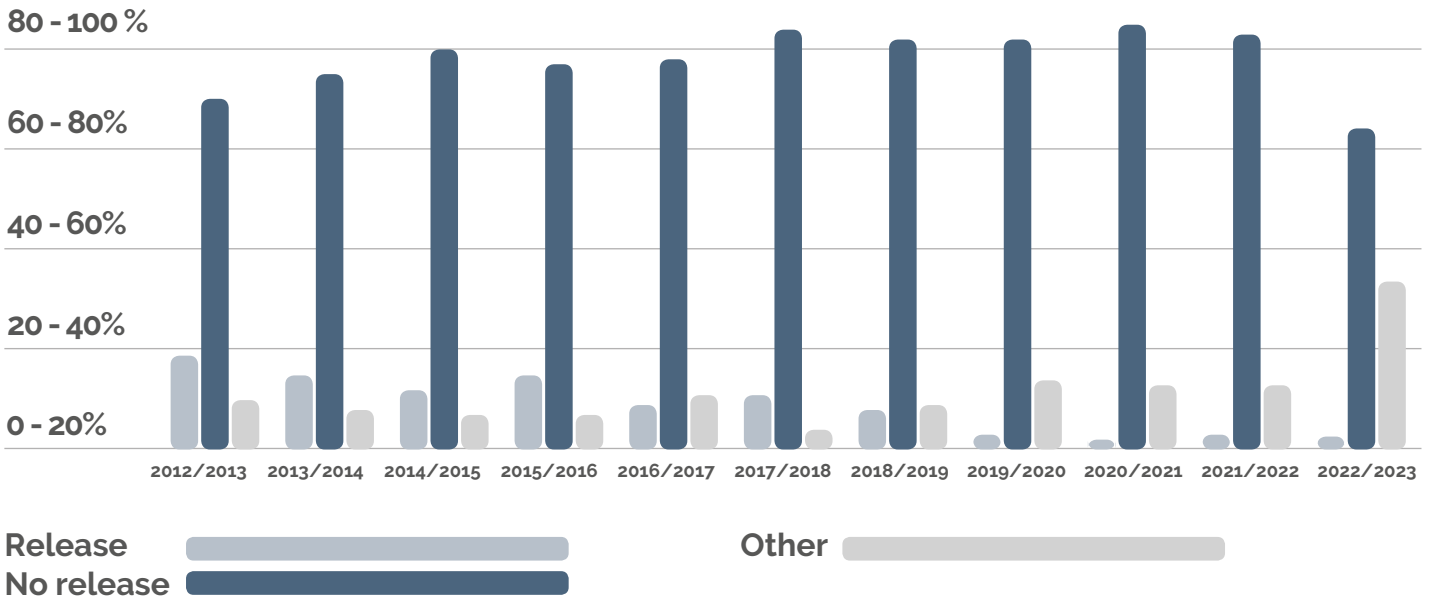
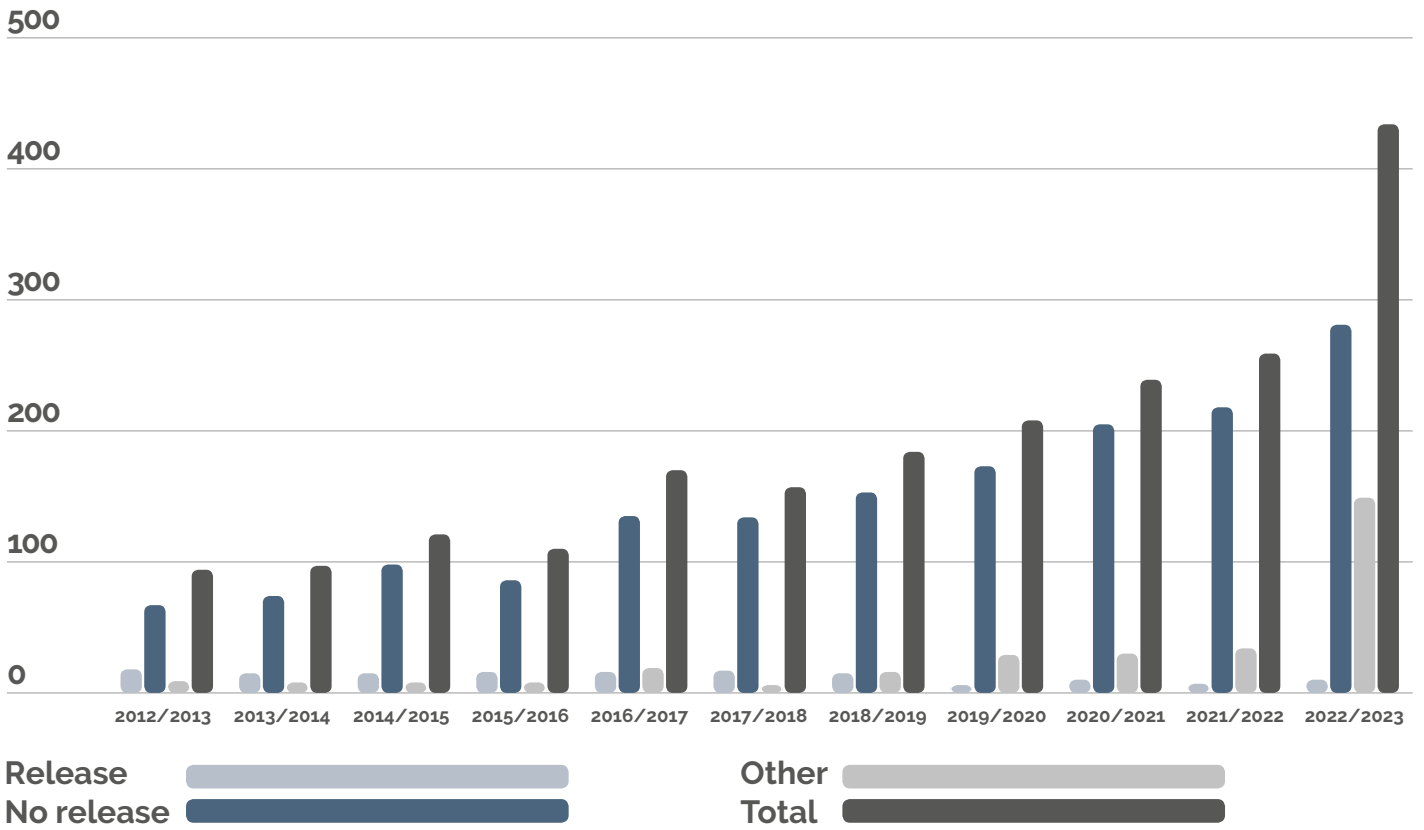
**Determinate sentence prisoners - first review for release**



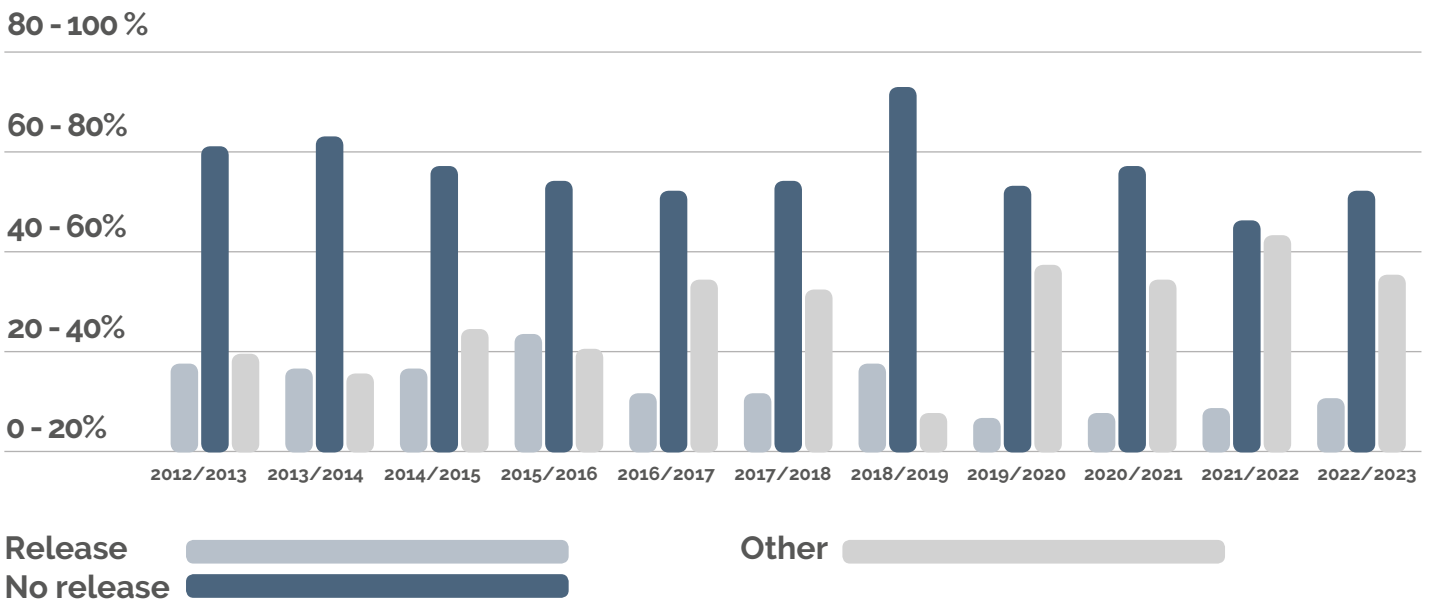
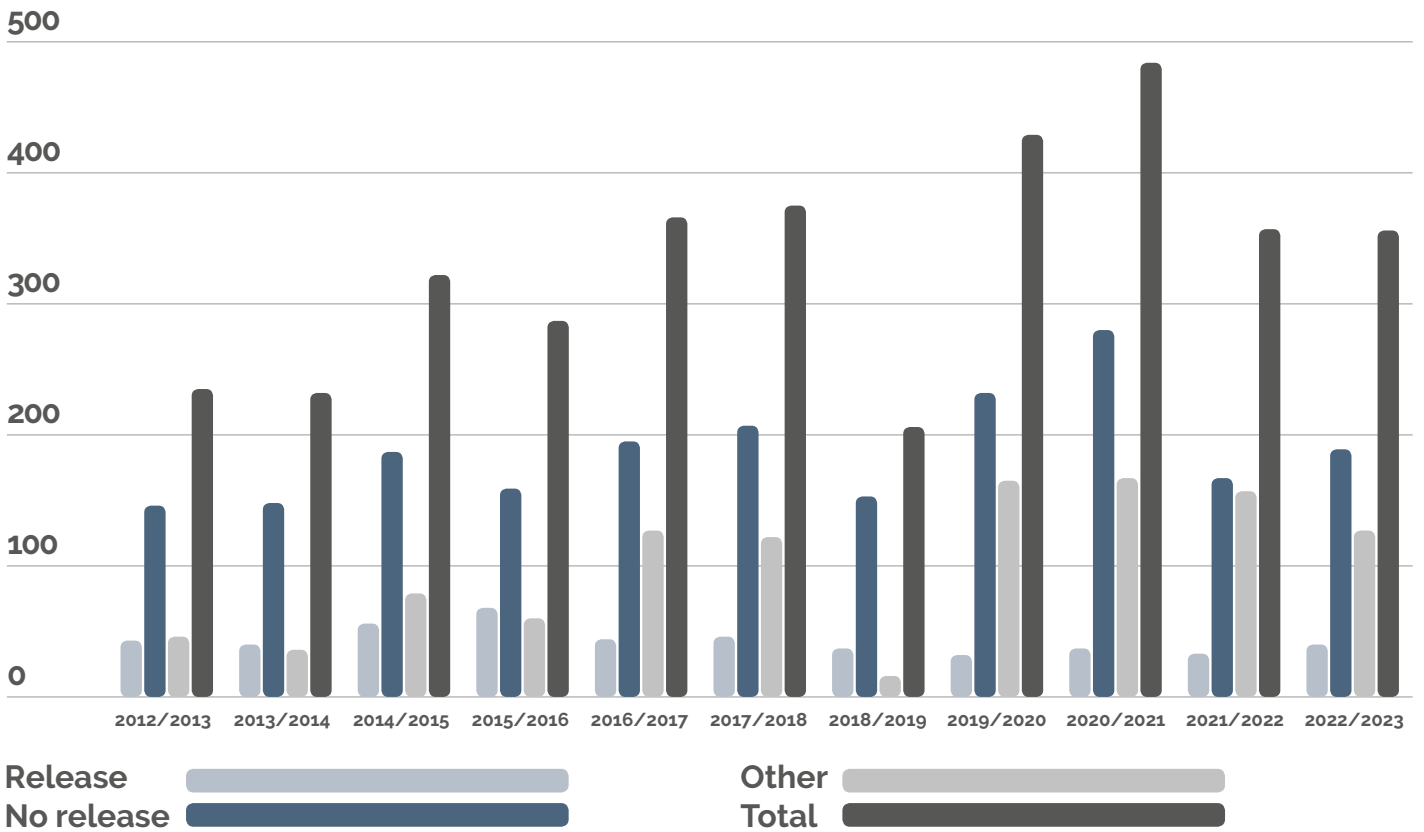
**Determinate sentence prisoners - subsequent review for release**



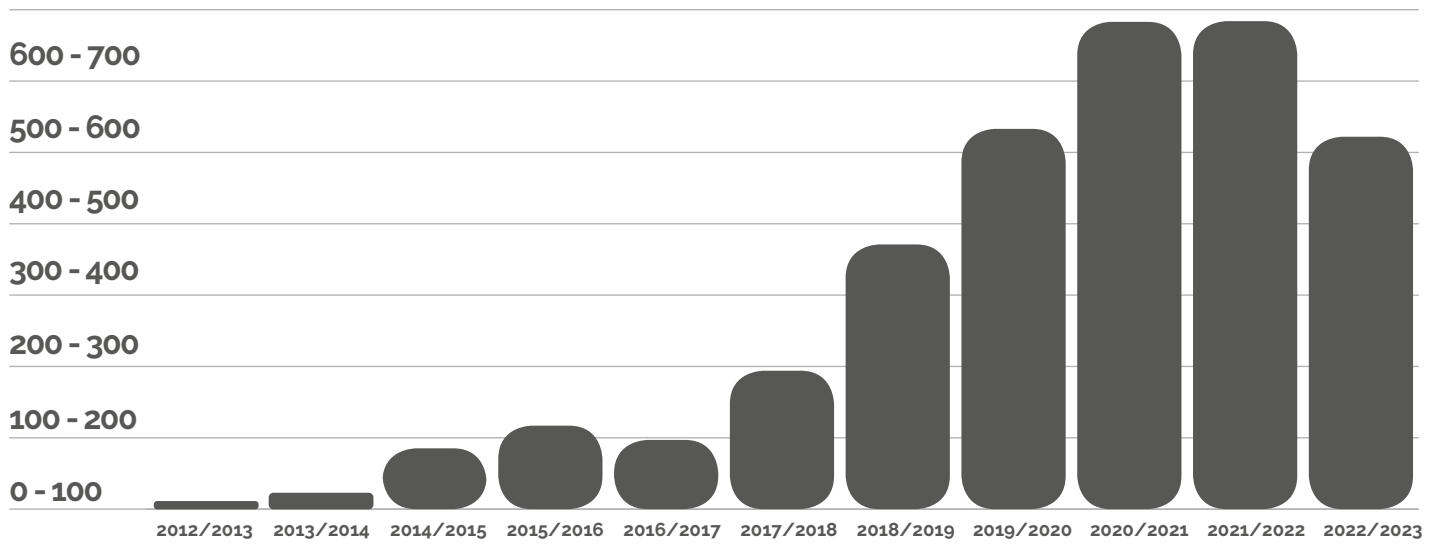
### Extended Sentence Prisoners - Review for Early Release



## Life sentence Prisoners



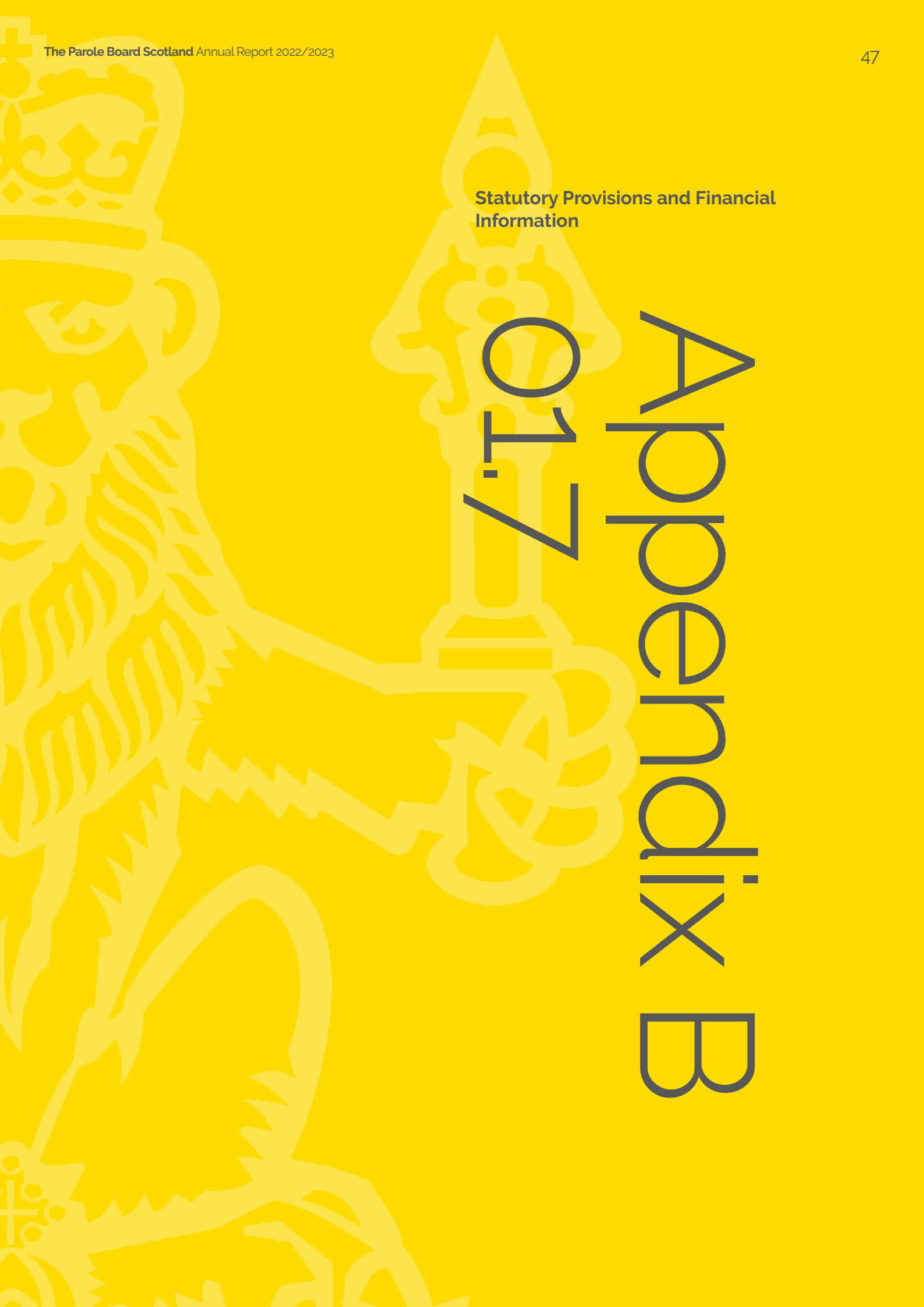
## Oral Hearings



Statutory Provisions and Financial  
Information

# Appendix B

## O1.7



**Prisoners and Criminal Proceedings (Scotland)  
Act 1993, as amended SCHEDULE 2  
The Parole Board**

**Membership**

1. The Parole Board shall consist of a Chairman and not less than 4 other members appointed by the Scottish Ministers.
- 1A. In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed in regulations made by them.
- 1B. In making regulations under paragraph 1A above, the Scottish Ministers may make different provision for different kinds of members of the Board, including kinds of members having the respective qualifications for office specified in paragraph 2 below.
2. The Parole Board shall include among its members:
  - (c) a person appearing to the Scottish Ministers to have knowledge and experience of the supervision or after-care of discharged prisoners; and
  - (d) a person appearing to the Scottish Ministers to have made a study of the causes of delinquency or the treatment of offenders.

**Limitation, termination etc. of appointment of members**

- 2A. An appointment as a member of the Parole Board shall, subject to paragraph 2B to 2D below, last for the period of 5 years beginning with the date of appointment as specified in the instrument of appointment.
- 2B. A member of the Parole Board may resign at any time by giving notice to that effect to the Scottish Ministers.
- 2C. An appointment of a person as a member of the Parole Board shall not extend beyond the day when the person reaches the age of 75.
- 2D. The appointment of a member of the Parole Board shall come to an end upon the member's being removed from office under paragraph 3 below.
  - (1) A person who has been a member of the Parole Board is eligible for appointment to the membership on a subsequent occasion.
  - (2) The exception to this is where the person's membership has previously ceased by virtue of—
    - (a) paragraph 2C, or
    - (b) paragraph 2D.



## Automatic reappointment

2HA (1) A member of the Parole Board is to be reappointed to the membership on the expiry of the period of the member's appointment, unless—

- (a) in any case, sub-paragraph (2) applies, or
  - (b) where the member is not the chairperson, sub-paragraph (3) applies.
- (2) This sub-paragraph applies if the member has declined to be reappointed.
- (3) This sub-paragraph applies if the Scottish Ministers have accepted a recommendation made to them by the chairperson that the other member should not be reappointed.
- (4) A recommendation of that kind may be made to the Scottish Ministers only if the chairperson is satisfied that—
- (a) the other member has failed to comply with any of the terms and conditions of membership by which the member is bound, or
  - (b) the number of members required for the Board to carry out its functions is such that the services of the other member are no longer needed.
- (5) The instrument of appointment of the member may be annotated or reissued so as to show that the member is reappointed under sub-paragraph (1).

2HB (1) Sub-paragraphs (2) and (3) apply in connection with paragraph 2HA(1).

- (2) The reference in paragraph 2HA(1) to the period of the appointment includes each period of reappointment under that paragraph.
- (3) In addition—
  - (a) the provisions of paragraphs 1 to 2D apply in relation to reappointment under paragraph 2HA(1) as well as applying otherwise, and
  - (b) the references in paragraphs 1 to 2D to appointment are so far as necessary for this purpose to be read as including reappointment, which in particular means that reappointment is for 5 years at a time."

## Performance of duties

2J. The Chairman of the Parole Board shall have regard to the desirability of securing that every member of the Parole Board is given the opportunity of participating appropriately in the functions of the Board under this Act on not fewer than 20 days in each successive period of 12 months beginning with the day of the member's appointment as such.

### Removal of members from office

3. A member of the Parole Board may be removed from office by and only by order of the tribunal constituted by and under paragraph 3B below ("the tribunal").
- 3A. The tribunal may order the removal from office of a member only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.
- 3B. The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session:
  - (a) either a Senator of the College of Justice or a sheriff principal (who shall preside);
  - (b) a person who is, and has been for at least 10 years, legally qualified; and
  - (c) one other person who shall not be legally qualified.
- 3C. For the purposes of paragraph 3B above, a person is legally qualified if that person is an advocate or a solicitor.
- 3D. Regulations made by the Scottish Ministers:
  - (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a member from office and providing as to the effect and duration of such suspension; and

- (b) shall make further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

### Remuneration and Allowances

4. There shall be paid to the members of the Parole Board such remuneration and allowances as the Scottish Ministers may, with the consent of Treasury, determine.
5. The expenses of the Board under paragraph 4 above and any other expenses incurred by the Board in discharging its functions mentioned in section 20(1) of this Act shall be defrayed by the Scottish Ministers.

### Reports

6. The Board shall as soon as possible after the end of each year make to the Scottish Ministers a report on the performance of its functions during the year, and the Scottish Ministers shall lay a copy before Parliament.

### Regulations

- 6A. Regulations under paragraphs 1A and 3D above shall be made by statutory instrument.
- 6B. No such regulations shall be made unless laid before, and approved by resolution of, the Scottish Parliament.

### Financial Information Fees and Expenses

1. Under the provisions of Schedule 2 of the 1993 Act, members of the Parole Board for Scotland may receive sessional fees for attendance at Board meetings; and they may also be paid a full fee or part of a fee for undertaking other business of the Board, the sessional rates payable to each category of member during 2022 - 23 were as follows:

	1/4/22 - 31/3/23
Chairman	£518.92
Legal Member	£342.92
Psychiatrist	£342.92
General Member	£222.92
Case Work Meeting Chair	£50

2. Members of the Board are also paid allowances for travelling and subsistence in accordance with prescribed scales.
3. The Board's expenditure during 2022 - 23 was £3,122,706 made up as follows:

Members Fees, Staff Salaries and Travel/Subsistence	£2,794,699
Legal Costs	£138,711
Other	£189,296
Total	£3,122,706

### Cost Effectiveness

4. The Board recognises the need to have due regard to economy and cost effectiveness in carrying out its functions. Examination of the costs incurred by the Board during 2022 - 23 reveals that the work of the Board continues to represent good value for money. The average cost of Tribunals convened in 2022 - 23 for life prisoners and extended sentence prisoners is £1000. The average cost of considering a case at a meeting of the Board is £200.

5. The average cost to carry out these functions includes members' fees; and their travel and subsistence costs.

### Judicial Review – Compensation Payments

6. There have been no compensation claims in this reporting year.

### Report on Expenditure under Part 3 of Public Services Reform (Scotland) Act 2010

Public Relations	Nil
Overseas Travel	Nil
Hospitality and Entertainment	Nil
External Consultancy	Nil
Payments in excess of £25,000	Nil
Employees/Members earning in excess of £150,000	Nil

The Parole Board for Scotland continues to be committed to providing an effective and efficient method of service delivery.

Further information on how the Board has changed its standard operating procedures using information technology and revised business processes is contained in the Progress Report section of this report. The Board's Management Group will continue to look for further opportunities to drive out efficiencies and savings.

The Parole Board for Scotland  
Saughton House  
Broomhouse Drive  
Edinburgh EH11 3XD

t. 0131 244 8373

[www.scottishparoleboard.scot](http://www.scottishparoleboard.scot)

APS Group Scotland  
PPDAS958326 (04/2024)