

Release of Life Prisoners

Guidance

Scottish Executive Justice Department

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<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2001/20010315.htm>

1. Introduction

1.1 Legislative Background

The statutory provisions governing the release of life prisoners are contained in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended) ("the 1993 Act"), especially in section 2. The law governing the release of adult mandatory life prisoners was amended fundamentally by the relevant provisions contained in the Convention Rights (Compliance) (Scotland) Act 2001 ("the 2001 Act").

The relevant provisions of the 2001 Act amended the 1993 Act so that the law governing the release of adult mandatory life prisoners was brought into line with that already applicable to discretionary life prisoners and those given an indeterminate sentence for murder committed when under the age of 18 years. This change in the law came into effect on 8th October 2001.

From 8th October 2001, on sentencing a person to life imprisonment, detention for life or detention without limit of time the Court must make an order specifying the punishment part of the sentence. The punishment part is that part of the sentence that the Court considers appropriate to satisfy the requirements for retribution and deterrence, ignoring the period of confinement, if any, which may be necessary for the protection of the public. There are further provisions governing the factors that the Court must take into account where it imposes a discretionary life sentence. In essence, in specifying the length of the punishment part, it is required to take into account the provisions in the 1993 Act governing the early release of prisoners sentenced to a determinate term.

With regard to those adult mandatory life prisoners sentenced before 8th October 2001, the 2001 Act made provision for those concerned to be referred to the High Court of Justiciary so that the Court could make an order specifying the punishment part.

On the expiry of the punishment part the prisoner has the right to have the grounds for his or her continued confinement considered by the Parole Board. In considering such cases the Board is constituted as a Life Prisoner Tribunal. There is an oral hearing before the Tribunal at which the prisoner may be legally represented and at which the Scottish Ministers are represented by an official of the Justice Department, supported by an official from the Scottish Prison Service. If a Life Prisoner Tribunal is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined it will direct release. On receipt of a direction to release, the Scottish Ministers are obliged, by law, to release the prisoner as soon as reasonably practicable. In practice, this will normally be within 24 hours and no later than 48 hours from receipt of the direction. The Scottish Ministers have no discretion to exercise in such cases.

1.2 Life Prisoner Tribunals

As recorded above once a life prisoner's punishment part has expired he or she has the right to have his or her continued confinement considered by a Life Prisoner Tribunal. Tribunals comprise three members of the Parole Board. Tribunals must be chaired by a person who holds or who has held judicial office, or a solicitor or advocate of not less than 10 years standing. Tribunal hearings must be convened as soon as practicable after the expiry of the punishment part.

Part IV of the Parole Board (Scotland) Rules 2001 (SSI 2001 No. 315) makes provision for:

- ◆ the composition of the tribunal to deal with a case (rule 18);
- ◆ the general procedure to be followed, including, if need be, a preliminary hearing (rule 19);
- ◆ a hearing of the case, unless both the Scottish Ministers and the prisoner ("the parties") and the tribunal otherwise agree;
- ◆ notice of the hearing (rule 21);
- ◆ a party to be represented (rule 22);
- ◆ a party to call a person to give evidence or produce documents (rules 23 and 24);
- ◆ a party to be accompanied by other persons (rule 25);
- ◆ who may attend the hearing (rule 26);
- ◆ the procedure at the hearing (rule 27); and
- ◆ the manner in which decisions may be taken by the tribunal and notified.

The Schedule to the 2001 Rules specifies the information and documents (the dossier) that require to be sent by the Scottish Ministers to the Parole Board for consideration by the Tribunal. The prisoner must receive exactly the same material. There is no power in a tribunal case to withhold information or documents from a prisoner where that information or document is made available to the tribunal. Furthermore, it is essential that the tribunal is given all information which is relevant to risk, since otherwise it cannot properly carry out its function.

The Rules further provide (rules 23 and 24) for persons to attend, or be cited to attend Tribunal hearings.

It is strongly recommended that those who are involved in Life Prisoner Tribunal proceedings study closely the 2001 Rules and familiarise themselves especially with the timetable for the various stages of the process in Tribunal cases. These rules must be adhered to.

2. The Role of Prison Based Social Work

2.1 If it is decided at a tribunal that a prisoner is safe to be released then he will be released usually within 24 or at the most 48 hours of the publication of the tribunal's decision. This means that in every case pre-release work has to be carried out on the assumption that the prisoner may be released and a pre-release package must be prepared prior to the tribunal hearing as there will be very little time once the tribunal's decision is published.

Timescales for reports

2.2 Under rule 5 of the Parole Board (Scotland) Rules 2001, in the context of transitional cases (that is, prisoners sentenced before the 8th of October 2001) Scottish Ministers have 12 weeks from the date in which a case is referred to the Parole Board to send a dossier to the Board. Establishments are then invited to return the dossier of reports within 6 weeks. This allows time to iron out and clarify issues that may be contained in the dossier and also to consult Ministers where this is appropriate

In the context of those prisoners sentenced to life imprisonment on or after 8th October 2001, it is standard procedure to write to establishments 20 weeks before expiry of the punishment part. This is also the procedure - where time permits - in all cases where there is a second or subsequent review, the timing of which is a matter for the tribunal on disposal of the case where release is not directed.

In general it is expected that 6 weeks notice will be given to the establishment and that in this time the establishment has to get the dossier prepared. It is important that the request for social work reports (both prison based and the community-based report) must be transmitted from the parole desk within the prison to the Social Work Unit within the prison without delay. The parole desk should give a minimum of 4 weeks notice for the reports to be completed and returned. This should still allow approximately 2 weeks for the Lifer Liaison Officer to put together the full dossier.

The tribunal hearing

2.3 Social workers cannot be cited by a prisoner or the agent acting on his or her to attend the tribunal hearing. The social worker can though be invited to attend the hearing by the prisoner or his agent or by the Justice Department on behalf of Scottish Ministers. A refusal to attend may result in the chairman of the tribunal being invited to cite the social worker. If the chairman agrees that the social worker should attend the hearing the social worker will be cited to appear and must appear.

Social workers attending tribunals would be expected to answer questions pertinent to their knowledge of a case. The tribunal, the prisoner/and/ or his agent and the official representing the Scottish Ministers can put questions to them.

Format of reports

2.4 Social workers in the body of their reports can and indeed should express any professional opinion they may hold as to whether a prisoner is safe to be released into

the community. If a social worker in his or her professional opinion considers that a prisoner would or would not present a risk to the safety of the public then it must be open to the social worker to record that opinion. It is recognised that tensions can arise where a social worker records that the prisoner presents a high risk but the prisoner has progressed to open conditions suggesting that the risk is acceptable.

Short reviews

2.5 A tribunal may decide that there will be a further review 3 months or 6 months hence. Tribunals do explain the reason for the timing of the next hearing and this may be in relation to a specific matter such as suitable accommodation being identified in the community.

Access to information

2.6 If the community social worker considers it necessary to see reports written by other parties prior to writing their own report it is suggested that they should pursue this with the Lifer Liaison Officer within the relevant prison either directly or through the prison based social work unit.

2.7 As with other parole assessments once the actual assessment process has commenced it is strongly advised that the prisoner remains within the establishment where he is located until the assessment is completed. In the exceptional case – for good order and or discipline reasons – where a prisoner has to be moved the worker who commenced the assessment should generally complete the exercise.

Cross Border transfers

2.8 If a prisoner wants to be supervised on release in another UK jurisdiction then the arrangements are governed by the provisions contained in Schedule 1 of the Crime (Sentences) Act 1997 on which guidance was issued by Social Work Services Group (Community Justice Division) in August 1999.

3. The Role of Community Based Social Work

Home Background reports

3.1 The social work department in the area which the prisoner intends to reside on release will be responsible for the preparation of the Home Background report. The Home Background report should be prepared on the basis of the information contained in Chapter 5 Sections 149-157 of National Objectives and Standards for Criminal Justice Social Work.

3.2 Attention is also drawn to sections 1.2 and 2.4 of this guidance which provides that the prisoner must receive all information contained in the dossier and places a responsibility on the social worker to provide any information that might be pertinent to the release of the prisoner. Report writers have a duty in the interest of community

safety to ensure that any opinion on the risk posed by the prisoner on release is conveyed in the report.

3.3 In preparation of the report the supervising officer **must** adhere to the timescales laid down in section 2.2 of this circular.

Pre release planning

3.4 Scottish Ministers are required by law to release a prisoner as soon as reasonably practicable. In practice this will normally be within 24 hours and no later than 48 hours from receipt of the direction. The Scottish Ministers have no discretion to exercise in such cases.

3.5 The requirement to release a prisoner following this direction will inevitably impact on the timescale for pre release planning arrangements. Supervising officers should work on the assumption that a prisoner may be released on the direction of the tribunal and begin the pre release planning process as soon as the request for a Home Background report is received.

3.6 There will inevitably be issues i.e. housing and employment which are unresolved. These issues should be clearly identified in the home background report and the Tribunal updated as necessary. Because a prisoner may or may not be released, it may be that in some cases suitable accommodation cannot be assured in advance of a decision to release. In such circumstances, supervising officers should take such steps as are reasonable to ensure that the prisoner has the opportunity to access the suitable accommodation on release. Where the release of a prisoner to no fixed abode would cause serious public or personal safety risks a tribunal may, if it considers that the absence of suitable accommodation would mean that the prisoner would constitute an unacceptable risk, decide to review the case at a later date.

3.7 Circular 12/2002 (revised) Throughcare Provision for Long Term Prisoners and Prisoners subject to Supervised Release Orders provides guidance on the arrangements for the delivery of enhanced social work services to life and long term prisoners. The guidance requires local authorities to appoint community based supervising officers to all such prisoners. As the arrangements in circular 12/2002 develop the process of contact, review and planning will provide the basis for developing a long term assessment of the risk and needs of the prisoner attending the tribunal.

3.8 The arrangements in circular 12/2002 will take time to develop therefore social workers are advised as a matter of priority to identify life prisoners who have not been considered by a tribunal and begin preparations for pre release planning in advance of a tribunal date. Similarly, where a prisoner has attended a tribunal but is subject to a short-review (see paragraph 2.5) the social worker should continue the pre release planning process.

Further Advice

4. Further advice on the law governing the release of life prisoners or on the procedures relating to Life Prisoner Tribunals can be obtained by consulting: Parole and Life Sentence Review Division, Scottish Executive Justice Department, 2W.01, St Andrew's House, Edinburgh, EH1 3DG (telephone 0131 244 8531 or 8536 or 8537).

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