

CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Part 2

Constitution of Parole Board for Scotland

39. This Part of the Act amends the 1993 Act to provide new arrangements for the appointment, tenure and removal of Parole Board members.

Appointment and removal of Parole Board members

40. [Section 5\(1\)\(a\)](#) amends section 20(1) of the 1993 Act by repealing the words “this Part of”. This is a technical and consequential amendment. It is intended to ensure that the Board as reconstituted by the Act can still consider the cases of persons who are subject to the release provisions in the Prisons (Scotland) Act 1989.
41. [Section 5\(1\)\(b\)](#) amends section 20(4) of the 1993 Act by inserting new paragraph (ba). This paragraph allows the Scottish Ministers to make rules that would enable the Board to require any person to attend a hearing before it, either to give evidence or to produce documents. However, the Board’s power to require persons to attend does not extend to the prisoner whose case is being considered.
42. [Section 5\(1\)\(c\)](#) inserts subsection (4A) into section 20 of the 1993 Act. This allows the Scottish Ministers to apply subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973 to any rules made under new paragraph (ba). These subsections make provision as to the attendance of witnesses and productions of documents at public inquiries. Section 210(4) sets out the persons who may be cited, the books and documents they may be required to produce, and the questions they may be required to answer. Section 201(5) sets out the circumstances in which an offence is committed, the method of trial and the sanctions available on conviction. However, subsection (4A) restricts the maximum penalty to a fine which cannot exceed level 2 on the standard scale.
43. [Section 5\(2\)](#) inserts two new paragraphs into schedule 2 to the 1993 Act. Paragraph 1A requires the Scottish Ministers to comply with any regulations they make on the procedure that is to govern the appointment of Board members, and the consultation with other parties which should take place before appointments are made.
44. Paragraph 1B allows the regulations to specify different procedures for the appointment of different Parole Board members. For example, it is intended that regulations will require most vacancies to be advertised in national newspapers or specialist journals. However, this would not be appropriate in relation to the appointment of a Lord Commissioner of Justiciary. A recommendation is received from the Lord Justice General prior to this appointment.

Appointment of Parole Board members

45. [Section 5\(3\)](#) contains 9 new paragraphs to be inserted into schedule 2 to the 1993 Act (paragraphs 2A to 2J) which regulate the conditions of service of Parole Board members.
46. Paragraph 2A provides that a Parole Board member will have a term of office of not less than 6 years and not more than 7 years. The variable length of appointment is designed to ensure that all appointments can end on 31 December, even if they begin on a date other than 1 January. The term of appointment provided for in this paragraph is, however, subject to paragraphs 2B to 2D.
47. Although every member will be appointed for between 6 and 7 years, paragraph 2B provides that he or she is still entitled to resign at any point during that term by notifying the Scottish Ministers accordingly.
48. Paragraph 2C provides that a Parole Board member's appointment will end on reaching his or her 75th birthday regardless of whether the period of appointment under paragraph 2A has expired. It also means that no person can be appointed or re-appointed as a member of the Parole Board after the age of 75.
49. Paragraph 2D provides that a Parole Board member's appointment will come to an end if that member is removed from office by the tribunal that is provided for in the new paragraph 3 of schedule 2 to the 1993 Act (inserted by section 5(4)).
50. Paragraph 2E provides that a person may be reappointed as a member of the Parole Board only if two conditions are fulfilled. One is that at least 3 years have passed since the person was previously a member and the other is that the person has not already been reappointed under these provisions.
51. Paragraph 2F allows a person who has previously been a member of the Parole Board but who has resigned from that office to be reappointed, provided the conditions laid out in paragraph 2E are fulfilled.
52. Paragraph 2G precludes the reappointment of a person who has been removed from office under the new paragraph 3 of schedule 2 to the 1993 Act.
53. Paragraph 2H provides that a person who is reappointed under paragraph 2E will be subject to the provisions of paragraphs 1 to 2D in the same way as a person who has been appointed for the first time.
54. Paragraph 2J requires the Chairman of the Parole Board to ensure that, where possible, each member of the Parole Board has the opportunity to participate in the functions of the Board for at least 20 days in each 12-month period.

Removal of Parole Board members from office

55. [Section 5\(4\)](#) replaces the original paragraph 3 of schedule 2 to the 1993 Act with new paragraphs 3 to 3D. These new paragraphs set out the grounds for removing a Parole Board member from office and the procedure for doing so.
56. [Paragraph 3](#) places the responsibility for deciding on removal on a tribunal to be constituted for this purpose.
57. Paragraph 3A provides that the tribunal can remove a member from office only if an investigation has been carried out at the request of the Scottish Ministers and that investigation has found the member to be unfit for office because of inability, neglect of duty or misbehaviour.
58. Paragraph 3B determines the membership of the tribunal. The members will be appointed by the Lord President of the Court of Session and will be:
“(a) *a Senator of the College of Justice or a sheriff principal (who shall preside),*

*These notes relate to the Convention Rights (Compliance) (Scotland)
Act 2001 (asp 7) which received Royal Assent on 5 July 2001*

- (b) *an advocate or a solicitor who has been qualified for at least 10 years; and*
- (c) *one other person who shall not be legally qualified.*

59. Paragraph 3D(a) allows the Scottish Ministers to make regulations, which will allow the tribunal to suspend a member of the Parole Board from office during an investigation. The regulations may also make provision for the length and effect of any such suspension. Sub-paragraph (b) empowers the Scottish Ministers to make any other provision considered necessary in respect of the tribunal, including procedure to be followed by and before it.
60. [Section 5\(5\)](#) inserts paragraphs 6A and 6B into schedule 2 to the 1993 Act. These paragraphs provide that the regulations under paragraphs 1A and 3D of schedule 2 will be made by statutory instrument, and must be laid in draft before and approved by a resolution of the Scottish Parliament.
61. [Section 5\(6\)](#) gives effect to Part 6 of the schedule for the purpose of making transitional provisions for existing members of the Parole Board.