

## EXECUTIVE NOTE

### THE PAROLE BOARD (SCOTLAND) AMENDMENT RULES 2010 SSI/2010/164

1. The above instrument is to be made in exercise of the powers conferred by section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. It amends the Parole Board (Scotland) Rules 2001 (the principal Rules). The instrument is subject to negative procedure.

#### **Background**

2. The Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the Act”) sets out the framework for how the rules governing how the Parole Board makes decisions on cases which come before them.

#### **Policy Objectives**

3. The purpose of this instrument is to make amendments to the Parole Board (Scotland) Rules 2001 (SSI 2001/315) (“the principal rules”) which came into force on 8 October 2001.

#### **Amendment to Rule 6 – Disclosure of Information**

4. Rule 2(2) amends rule 6 of the principal Rules. Rule 6 of the principal Rules applies where Scottish Ministers or the Parole Board (“the Board”) consider that any written information or document should not be sent or disclosed to the “person concerned” (the prisoner) because its disclosure would be likely to be damaging on one or more of the grounds set out in rule 6(1)(b). Rule 2(2)(b) revokes paragraph 6(3) of the principal Rules, so that the provisions of Rule 6 are applied to tribunal cases under Part IV of the principal Rules.

5. The purpose of the amendments to rule 6 of the principal Rules is to resolve a concern that has arisen in cases where a person is subject to an Order for Lifelong Restriction (OLR). The Rules currently require that in such cases, **all** information contained in the dossier prepared by Scottish Ministers for the Parole Board must be made available to the offender. However, this may result in an offender having access to information which could be potentially damaging to the offender or to another person. Specifically the information contained in the offenders Risk Management Plan could be prejudicial to the management of the offenders risk and it is therefore desirable to provide Scottish Ministers or the Parole Board with the power to withhold information from the offender in certain circumstances. The effect of the amendment will as stated bring OLR cases and also other tribunal cases dealing with lifers and extended sentence prisoners (Part IV cases) in to line with determinate sentence cases for those sentenced to four or more years (Part III cases) where that power to withhold information already exists in Rule 6 of the principal Rules

6. Rule 2(2)(a) removes the word “ or gist” in rule 6(2)(c)(ii) of the principal Rules. Where rule 6(2) applies and the Scottish Ministers or the Board, send written notice to the person concerned informing them that certain information has not been sent or disclosed, such a written notice must give the person concerned the substance of the damaging

information, as far as is practicable without prejudicing the purposes for which the information was not disclosed.

7. The words ‘or gist’ in the context of principal Rule 6(2)(c)(ii) is unclear and open to interpretation and could be prejudicial to the prisoner when making representations (as allowed in principal Rule 7) in relation to any withheld information. For the sake of clarity the principal Rules are amended to remove the words.

#### **Insertion of Rule 12A – Use of a live link**

8. Rule 2(3) inserts new rule 12A into the principal Rules to allow the use of a live link (such as a television link) in taking the evidence of the prisoner or witnesses or to conduct an interview with a prisoner (Rule 15(3) of the principal Rules). In order for a live link to be used, it must be considered by the Board to be within the interests of justice to do so. A live link may be applied for by the “person concerned” (the prisoner) or the Scottish Ministers, or be granted on the Board or tribunal’s own motion. The parties to the case (the prisoner and Scottish Ministers) will be given the opportunity to make representations to the Board before a decision is made to use a live link.

9. The purpose of this amendment is to modernise and improve the efficiency in the way the Parole Board conducts its business. It will help to avoid potentially prejudicial delays from unnecessarily re-scheduled cases due to e.g. transport difficulties. The Parole Board currently conduct Tribunals using a television link and this amendment will simply put this on a statutory footing.

#### **Substitution of Rule 5 – Composition of Tribunal**

10. Rule 2(4) substitutes paragraph (5) of rule 18 of the principal Rules, so that if for any reason any member of a tribunal becomes unavailable to sit in a given case (for example through illness), the chairman of the Board can, subject to paragraphs (2), (3) and (4) of rule 18, appoint another member to take the place of the absent member. If the absent member of the tribunal is a member other than the chairman, then with the consent of the parties, the case may be dealt with, or continue to be dealt with in cases where a hearing has already commenced, by the remaining two members of the Tribunal.

11. This amendment allows the chairman of the Board, with the consent of the parties agrees to a Tribunal commencing with the remaining two members of the Tribunal. Currently Rule 18 only allows for a Tribunal’s continuance with two members. This will help to avoid potentially prejudicial delays because cases need to be re-scheduled cases due to the illness, death or incapacity of a Tribunal member.

#### **Consultation**

12. The Parole Board for Scotland has been consulted on all these amendments and the Risk Management Authority and the Scottish Prisons Service who have an interest in the provisions relating to the withholding of information in Tribunal cases have been consulted on these amendments and support them.

## **Financial Effects**

13. The amendments will have no appreciable financial effects.

Parole Unit  
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