

EXECUTIVE NOTE

THE PAROLE BOARD (SCOTLAND) AMENDMENT RULES 2011

SSI 2011/133

1. The above instrument is proposed to be made in exercise of the powers conferred by section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(a). The instrument is subject to negative resolution procedure.

Background

2. Under section 210A of the Criminal Procedure (Scotland) Act 1995, an extended sentence is the aggregate of two elements – the “custodial term” that the offender receives for the offence and the “extension period” being the period of post-release supervision that the court deems necessary to protect the public from serious harm. These terms are defined in section 210A(2).

3. The Parole Board (Scotland) Rules 2001 (S.S.I. 2001/315) (“the 2001 Rules”) make provision to allow the Parole Board to consider the release of various categories of prisoner. Under Part III of the Rules, the Board considers cases without holding an oral hearing. Under Part IV of the rules, cases are dealt with by way of an oral hearing heard by a tribunal.

4. At present, prisoners who are subject to an extended sentence and who are recalled to custody for breach of licence, are dealt with by the Parole Board for Scotland under Part IV of the 2001 Rules, which requires the case to be dealt with by way of a oral hearing by a tribunal.

Policy objective

5. The intention is to amend the 2001 Rules so that extended sentence prisoners, who are recalled to custody during the custodial term of their sentence, are treated as Part III cases in the same as all other determinate sentence prisoners. This would mean cases being considered at “case-work” meetings of the Parole Board, reviewing the case on paper without the prisoner or other parties being present.

6. Prisoners who are recalled during the extension period of their sentence would continue to have their suitability for re-release considered by the Parole Board sitting as a tribunal in terms of Part IV of the 2001 Rules.

7. We also wish to insert a new Rule (15A) into the 2001 Rules to allow the Board to hold an oral hearing in various categories of Part III case, (which will include extended sentence prisoners recalled during the custodial term of their sentence), either on the application of the person concerned or if the Parole Board considers this is required in the interests of justice. New rules 15B-15H would set out how such a hearing is to be conducted.

8. It is considered that, while an extended sentence prisoner is serving the custodial term of his sentence, he is, to all intents and purposes, a determinate sentence prisoner. It is only when the prisoner moves into the extension period of his sentence that the basis for their

detention changes. Therefore, we consider that it is desirable to treat extended sentence prisoners who are recalled during the custodial part of their sentence in the same way as other determinate sentence prisoners, who are dealt with under Part III of the 2001 Rules. This change would also achieve considerable cost savings by reducing the number of tribunals the Board is required to hold in extended sentence cases, whilst ensuring that prisoners' rights under section 5 of the European Convention on Human Rights are protected.

Consultation

9. There is no statutory requirement to consult on this Order; we did not consider that public consultation was necessary. However, we sought the views of the Parole Board for Scotland, the Association of Directors of Social Work, the Association of Chief Police Officers in Scotland and the Law Society for Scotland. No objections were raised to our proposals.

Financial Effects

10. A regulatory impact assessment is not considered necessary because the change is expected to have no financial impact on Scottish businesses.

Justice Directorate
February 2011