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SCOTTISH STATUTORY INSTRUMENTS

2012 No. 197

PRISONS

The Parole Board (Scotland) Amendment (No. 2) Rules 2012

<i>Made</i>	- - - -	<i>18th June 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>20th June 2012</i>
<i>Coming into force</i>	- -	<i>26th June 2012</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(a) and all other powers enabling them to do so.

Commencement, citation, application and interpretation

1.—(1) These Rules may be cited as the Parole Board (Scotland) Amendment (No. 2) Rules 2012 and come into force on 26th June 2012.

(2) These Rules apply to every case referred to the Board on or after the 26th June 2012.

(3) In paragraph (2), “the Board” has the same meaning as in rule 2(1) of the Parole Board (Scotland) Rules 2001(b).

Amendment of the Parole Board (Scotland) Rules 2001

2.—(1) The Parole Board (Scotland) Rules 2001 are amended as follows.

(2) In rule 2(1), in the definition of “the Board”, omit “,15(3)”.

(3) For rule 14, substitute—

“Composition of the Board

14.—(1) Subject to rule 16 and the following paragraphs, the powers of the Board may be exercised—

(a) in a case that is determined to be dealt with by way of an oral hearing under rule 15A, by any 3 members of the Board;

(b) in any other case, by any 2 members of the Board.

(a) 1993 c.9. Section 20(4) was amended by the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 106; and by the Convention Rights Compliance (Scotland) Act 2001 (asp 7), section 5(1)(b); the functions conferred on the Secretary of State were transferred to Scottish Ministers by virtue of section 53(1) of the Scotland Act 1998 (c.46).

(b) S.S.I. 2001/315, as amended by S.S.I. 2005/445, S.S.I. 2010/164, S.S.I. 2011/133 and S.S.I. 2012/167.

- (2) Subject to rule 16, any case may be dealt with, in whole or in part—
- (a) in a case which is determined to be dealt with by way of an oral hearing under rule 15A, by any 3 members; or
 - (b) in any other case, by any 2 members of the Board,

who are appointed by the chairman of the Board for the purposes of dealing with that case, in whole or in part.

(3) The powers of the Board under rule 6(1) to decide that any written information or document should not be sent or disclosed to a person shall be exercised by the chairman of the Board or such member as may be appointed by him for that purpose.

(4) No member of the Board who took part in making a recommendation under section 28(1) of the 1989 Act in relation to a person shall deal with that person's case under section 28(4) of that Act.

(5) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a person shall deal with that person's case under section 17(3) of that Act.

(6) If a case is determined to be dealt with by way of an oral hearing under rule 15A, the members of the Board appointed under paragraph (2) must include either—

- (a) a person who holds or has held judicial office; or
- (b) a solicitor or advocate of not less than 10 years standing,

and the chairman of the Board will appoint that person to be chairman of the hearing.

(7) In the event of the death or incapacity or unavailability (for whatever reason) of any member of the Board appointed under paragraph (2) ("the absent member")—

- (a) the chairman of the Board may, subject to paragraphs (4), (5) and (8), appoint another member of the Board in place of the absent member; or
- (b) if the absent member is a member other than the chairman of a hearing, the case will be dealt with or, if a hearing under rule 15A has already commenced, will continue to be dealt with, by the two remaining members of the Board.

(8) Where paragraph (7) applies to a case being dealt with by 2 members of the Board, the chairman of the Board must appoint another member of the Board in place of the absent member."

(4) In rule 15H, after paragraph (2), insert—

"(3) Where the Board is constituted by 2 members and the 2 members cannot reach a unanimous decision, the chairman of the Board must appoint 3 other members in place of those 2 members in terms of rule 14(2)(a) for the purpose of hearing that case under rule 15A."

(5) For rule 16, substitute—

"Decision

16.—(1) The decision of the Board may be taken by a majority and the decision must record whether it was unanimous or taken by a majority.

(2) Subject to paragraph (4), where the Board is constituted by 2 members and the 2 members cannot reach a unanimous decision, the chairman of the Board must appoint a third member for the purpose of dealing with the case.

(3) Where the Board is constituted by an even number of members that is greater than 2, the chairman of the Board or other presiding member has a second or casting vote.

(4) Paragraphs (4) and (5) of rule 14 apply to any member appointed by the chairman under paragraph (2) of this rule."

Revocation

3. The following rules of the Parole Board (Scotland) Amendment Rules 2012(a) are revoked—

- (a) rule 7;
- (b) rule 12(d);
- (c) rule 13.

St Andrew's House,
Edinburgh
18th June 2012

KENNY MACASKILL
A member of the Scottish Executive

(a) S.S.I. 2012/167.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Parole Board (Scotland) Rules 2001 (“the principal rules”).

Rule 2(2) removes a reference to rule 15(3) from the definition of “the Board” in rule 2(1) of the principal rules. This is consequential on the removal of rule 15(3) by S.S.I. 2012/167.

Rule 2(3) substitutes a new rule 14 into the principal rules to provide that cases dealt with under Part III of the principal rules (other than those dealt with by an oral hearing under rule 15A) can be dealt with by 2 members. A case dealt with by an oral hearing under rule 15A will be dealt with 3 members except where rule 14(7) applies.

Rule 2(4) inserts a new rule 15H(3) into the principal rules. This provides that, where a case being dealt with by way of an oral hearing under 15A is being dealt with by 2 members, and the 2 members cannot reach a decision, the Board must appoint 3 other members in terms of rule 14(2)(a) for the purposes of hearing that case. This sets out what happens if an oral hearing case proceeds with an absent member (as defined in rule 14(7)).

Rule 2(5) inserts new a new rule 16 into the principal rules. New rule 16(2) provides that, in a case other than an oral hearing, where the 2 members cannot reach a unanimous decision, the chairman of the Board must appoint a third member of the Board for the purpose of dealing with the case.

Rule 3 revokes rules 7, 12(d) and 13 of the Parole Board (Amendment) Rules 2012 (S.S.I. 2012/167).

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