

*These notes relate to the Management of Offenders (Scotland) Act 2019 (asp 14) which received Royal Assent on 30 July 2019*

# **MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019**

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## **EXPLANATORY NOTES**

### **THE STRUCTURE AND A SUMMARY OF THE ACT**

#### **Part 3 – the Parole Board**

##### **Independence and governance**

##### ***Section 40 – Continued independence of action***

158. Section 40 provides that the Parole Board continues to act as an independent tribunal when exercising its decision making functions.

##### ***Section 41 – Administrative arrangements***

159. Section 41 provides that the Scottish Ministers may make regulations authorising the chairperson of the Parole Board to make provision about administrative arrangements within the Parole Board.
160. Subsection (2) provides an indication as to the types of arrangements that may be provided for by those regulations.
161. Subsection (3) provides that the regulations may allow for the chairperson to delegate responsibility for the arrangements and any further sub-delegation as required.
162. Subsection (4) provides that the Scottish Ministers must consult with the Parole Board before making any regulations under this section.
163. Subsection (5) provides that these regulations are subject to affirmative procedure in the Scottish Parliament.

##### **Membership and appointment**

##### ***Section 42 – Mandatory categories of member***

164. Section 42 amends paragraph 2 of schedule 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) in relation to the list of persons who must be amongst the members of the Parole Board. Section 42 removes a Lord Commissioner of Justiciary and a registered medical practitioner who is a psychiatrist, from the list of persons who must be included among the members of the Parole Board.

##### ***Section 43 – Appointment to be for fixed period***

165. Section 43 amends paragraph 2A of schedule 2 of the 1993 Act in relation to the length of a term of appointment to the Parole Board. Section 43 provides that the length of the period of appointment is reduced from a maximum of seven years, to a fixed period of five years beginning with the date of appointment.

#### **Section 44 – Further appointment to membership**

166. Section 44 amends paragraph 2 of schedule 2 of the 1993 Act in relation to the appointment of Parole Board members. Section 44 provides that a person, who has been a member of the Parole Board, is eligible for appointment on a subsequent occasion. It also provides for a new automatic reappointment procedure for Parole Board members.
167. Subsection (2) of section 44 inserts a new paragraph 2DA into schedule 2 of the 1993 Act to permit a person who has been a member of the Parole Board to be eligible for appointment on a subsequent occasion. New paragraph 2DA(2) of schedule 2 provides exceptions to this, namely where a person has: (a) reached the age of 75; or (b) has been removed from office by virtue of a tribunal constituted under paragraph 3 of schedule 2 of the 1993 Act.
168. Subsection (3) of section 44 makes consequential repeals of current provisions concerning membership of the Parole Board, contained in paragraphs 2E to 2H of schedule 2 of the 1993 Act.

#### **Automatic reappointment**

169. Subsection (4) of section 44 inserts new paragraphs 2HA and 2HB into schedule 2 of the 1993 Act to make provision for a new automatic reappointment procedure for Parole Board members. New paragraph 2HA(1) provides that a member of the Parole Board is to be reappointed to membership of the Parole Board unless the circumstances in paragraph 2HA(2) or (3) apply. Sub-paragraph (2) provides that automatic reappointment does not apply where the Parole Board member declines reappointment. Sub-paragraph (3) provides that automatic reappointment does not apply where the Scottish Ministers accept the recommendation of the chairperson of the Parole Board that it should not occur. Sub-paragraph (4) provides the grounds for the chairperson of the Parole Board to make such a recommendation; namely that: (a) the person has failed to comply with any of their terms and conditions of appointment; or (b) the Parole Board no longer requires the same number of members to carry out its functions. Sub-paragraphs (3) and (4) do not apply to the reappointment of the chairperson of the Parole Board.
170. Subsection (5) of section 44 provides that the instrument of appointment may be annotated and reissued to allow it to show that a member has been reappointed.
171. New paragraph 2HB of schedule 2 of the 1993 Act provides that the period of appointment, referenced in paragraph 2H(1), includes each period of reappointment. It also provides that the provisions concerning appointment of Parole Board members apply to periods of reappointment of Parole Board members and that reappointment is for a period of five years each time.

#### **Section 45 – References to the chairperson**

172. Section 45 amends paragraph 2 of schedule 2 of the 1993 Act to provide for gender neutrality in reference to the chairperson of the Parole Board.

#### **Section 46 – Amendment of oversight provisions**

173. Section 46 amends schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to remove the entry relating to the Parole Board for Scotland. The Judiciary and Courts (Scotland) Act 2008 is also amended to add the Parole Board for Scotland (including its Chair) to the offices that fall within the remit of the Judicial Appointments Board for Scotland. This changes the oversight of Parole Board appointments from the remit of the Commissioner for Ethical Standards in Public Life to the remit of the Judicial Appointments Board for Scotland.

***Section 47 – Repeal of statutory provisions***

174. Section 47 repeals Part 1 and Schedule 1 of the Custodial Sentences and Weapons (Scotland) Act 2007. Section 1 of that Act provided for the continuation of the Parole Board for Scotland and the functions that it would exercise for the purposes of that Act. Schedule 1 of that Act makes further provisions concerning the Parole Board (constitutional issues, membership, etc.). Section 2 of that Act provided that the Scottish Ministers may make rules to regulate the Parole Board's proceedings. Part 1 and Schedule 1 of that Act were not commenced. As a consequence of this repeal, the word 'rules' is also repealed from section 65 of the Act.