

## **EXECUTIVE NOTE**

### **THE PAROLE BOARD (SCOTLAND) AMENDMENT RULES 2012**

#### **SSI 2012/167**

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. The instrument is subject to negative resolution procedure.

#### **Background**

2. The Parole Board (Scotland) Rules 2001 (S.S.I. 2001/315) (“the 2001 Rules”) make provision to allow the Parole Board for Scotland (“the Board”) to consider the release of various categories of prisoner. Under Part III of the 2001 Rules, the Board considers cases using a simplified procedure which is based on a dossier of reports that is considered at a casework meeting. The Board can also conduct a Part III case meeting by means of an oral hearing at which the prisoner is present, should it consider such a hearing to be in the interest of justice. Under Part IV of the 2001 rules, which generally concerns the most serious categories of cases including prisoners sentenced to life imprisonment, cases are dealt with by way of a tribunal at which the prisoner is present.

#### **Policy objective**

3. The intention of the present Rules is to amend the 2001 Rules to provide the Board with more efficient administrative arrangements for the consideration of cases that come before it.

4. The use of electronic media to transmit documents securely has increased significantly across a range of public functions since the 2001 Rules came into force. Rule 3 of the present Rules amends rule 2(1) of the 2001 Rules to include a definition of “electronic communication” and rule 5 of the present Rules amends rule 11 of the 2001 Rules to allow the Board and other parties to use electronic communications to transmit and receive documents. The references to electronic communications replace the previous reference to facsimile transactions, which is now regarded as too narrow and outdated, although fax is retained as a method of sending documents to the Board.

5. References to timescales throughout the rules have been changed from “days” to an equivalent number of “working days”. For example, references to 14 days have been changed to 10 working days. Rule 2(1) of the 2001 Rules has also been expanded to include a definition of working days. The purpose of these amendments is to ensure that the parole process can be undertaken in a considered but still timely manner at times of the year when there are a large number of public holidays.

6. Part III cases are presently considered by a quorum of three members of the Board. Rule 7 of the present rules amends rule 14 of the 2001 Rules. Rule 14(1)(a) now retains a quorum of three for Part III oral hearings, while Rule 14(1)(b) reduces the quorum to two members for all other Part III cases i.e. those dealt with at a casework meeting in the absence

of the person concerned. Should a two-member quorum fail to reach a unanimous decision, rule 16(2) of the 2001 Rules now requires the Chair of the Board to appoint a third member to consider the case. For casework meetings constituted with an even number of members greater than two which fail to reach a unanimous decision, rule 16(3) of the 2001 Rules now allows the chair of the meeting to cast an additional vote to allow a decision to be reached. These amendments provide flexibility in the way in which the Board constitutes panels of members for casework meetings and is intended to allow scope for future savings.

7. Rule 7(1) of the 2001 Rules allows a prisoner to submit written representations, together with any other information in writing or documents, which the prisoner wishes the Board to take into account when considering their case. Rule 15(3)(a) of the 2001 Rules also allows the person concerned to request an interview with a member of the Board prior to their case being considered at a casework meeting, while Rule 15(3)(b) allows the Board to decide to undertake an interview if they consider it to be desirable. In practice, the interview procedure [often] duplicates information contained within the written representation and adds little value to the Board's decision-making process. Rule 8 of the present Rules removes the person concerned's right to request an interview with a member of the Board. This is intended to simplify procedures and produce savings for the Board. Prisoners' rights would continue to be protected through the right to submit written representations and the option of an oral hearing if the Board considered such a hearing to be in the interest of justice.

8. Rules 12(b) and 17(b) of the present rules amend Rule 15H(2)(b) and Rule 28(2)(b) of the 2001 Rules to allow the Chair of the Board to sign decision letters on those occasions when the chair of the casework meeting or tribunal is unavailable for whatever reason. These amendments are intended to allow the Board to inform the prisoner and other parties about the outcome of casework meetings and tribunals as quickly as possible following conclusion of proceedings. This is of particular importance when the decision is taken to instruct the immediate release of the person concerned, thereby avoiding any unnecessary further detention. The amendment also changes Rule 15A references from prisoner to person to ensure consistency with other references to persons in the 2001 Rules.

9. The quorum for Part IV cases remains at three members of the Board for all tribunal hearings under rule 18(1) of the 2001 Rules. However, rule 14 of the present rules amends rule 18(5) of the 2001 Rules, so that, in the event of a member other than the chair of the tribunal becoming unavailable for whatever reason, the requirement for all parties to consent before the tribunal could continue with the two remaining members is removed. Instead, the two remaining members are required to reach a unanimous (majority) verdict. Where the two remaining members fail to reach a unanimous decision, rule 17(a) of the present rules amends rule 28(1) of the 2001 Rules to remove the chair of the tribunal's casting vote and rule 17(d) of the present rules amends rule 28(3) of the 2001 Rules to require the chairman of the Board to convene a new tribunal with three other members to form a new tribunal to consider the case. These changes protect prisoners' rights by ensuring that Part IV tribunal decisions are always based upon a majority or unanimous verdict, as at present, while allowing for cases to proceed even where a member of a tribunal becomes unavailable.

10. Paragraph 5(b) of the schedule to the 2001 Rules requires copies of dossiers from previous referrals to be sent to the Parole Board for consideration at the prisoner's next tribunal. Rule 18 of the present rules replaces this with a narrower definition of papers from previous referrals that need to be provided. The intention is that the volume of papers associated with previous consideration of the case is reduced, while ensuring the Board

continues to receive the most relevant documents. Paragraph (e) of Rule 18 allows the Board to request such additional information as they may require, providing an important safeguard should they consider any other information from previous consideration of the case is needed to reach a well-informed decision.

### **Consultation**

11. 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 Scottish Prison Service, 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**

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

**Justice Directorate**  
**May 2012**