

2003 No. 184

PRISONS

The Members of the Parole Board (Removal Tribunal) Regulations 2003

Made

7th March 2003

Coming into force

8th March 2003

The Scottish Ministers, in exercise of the powers conferred by paragraph 3D of Schedule 2 to the Prisoners and Criminal Proceedings (Scotland) Act 1993(a) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with paragraph 6B of Schedule 2 to the Act, been laid before, and has been approved by a resolution of the Scottish Parliament:

Citation and commencement

1. These Regulations may be cited as the Members of the Parole Board (Removal Tribunal) Regulations 2003 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993;

“the Board” means the Parole Board for Scotland;

“Board member” means the member of the Parole Board for Scotland who is the subject of the investigation;

“investigation” means an investigation carried out under paragraph 3A of Schedule 2 to the Act(b);

“tribunal” means the tribunal constituted by and under paragraph 3B of Schedule 2 to the Act(c);

“tribunal member” means a member of the tribunal.

Commencement of investigation

3. Prior to an investigation by the tribunal commencing, the Scottish Ministers shall give the Board member written notice of the investigation and of their reasons for requesting the investigation.

Payment to tribunal members

4. The Scottish Ministers may pay to a tribunal member such sums as they consider appropriate in respect of the performance of that person’s duties as a tribunal member.

(a) 1993 c.9; paragraphs 3D and 6B were inserted by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), section 5.

(b) Paragraph 3A was inserted by 2001 asp 7, section 5.

(c) Paragraph 3B was inserted by 2001 asp 7, section 5.

Change in membership of tribunal

5.—(1) This regulation shall apply where, after commencement of an investigation, any tribunal member—

- (a) dies;
- (b) resigns; or
- (c) is, in the opinion of the Lord President, unable to act.

(2) Subject to paragraph (3), the Lord President shall appoint a new tribunal member to replace the tribunal member referred to in paragraph (1).

(3) Where the tribunal member referred to in paragraph (1) is not the person presiding over the tribunal, a new tribunal member need not be appointed under paragraph (2) unless the Board member so wishes.

(4) On a new tribunal member being appointed under paragraph (2), the tribunal may (but need not) commence the investigation again.

Procedure – general

6. Other than as specified in these Regulations, the procedure to be followed by and before the tribunal shall be that determined by the tribunal.

Procedure – further provisions

7.—(1) The tribunal may receive oral or written evidence from such persons as it thinks fit.

(2) The tribunal shall give the Board member the opportunity to make written and, if the Board member wishes, oral representations regarding the matters which are the subject of the investigation.

(3) Representations under paragraph (2) may be made by the Board member personally or by anyone acting on his or her behalf.

(4) The tribunal shall sit in private and no tribunal member shall disclose information received in the course of an investigation other than for the purposes of carrying out the functions conferred on the tribunal by the Act and these Regulations.

Suspension

8.—(1) At any time during an investigation, the tribunal may suspend the Board member from office.

(2) A suspension imposed under paragraph (1) shall terminate—

- (a) on the tribunal deciding not to order removal of the Board member from office; or
- (b) before then, on the tribunal deciding to bring the suspension to an end.

(3) If the tribunal so directs, a Board member suspended under this regulation may remain in office as a member of the Board but only for the purpose of continuing to deal with proceedings of the Board commenced prior to the suspension taking effect.

Draft findings to be sent to Board member

9.—(1) The tribunal shall send to the Board member a draft of its findings on the investigation and shall give the Board member an opportunity to make comments on the draft by such date as the tribunal may specify.

(2) The tribunal shall have regard to any comments made under paragraph (1) but need not give the Board member an opportunity to comment on any alterations made to the draft prior to submission of the final report under regulation 10.

Report and decisions

10.—(1) On completion of its investigation, the tribunal shall submit a written report to the Scottish Ministers specifying—

- (a) its findings on the investigation;
- (b) its decision on whether to order removal of the Board member from office; and
- (c) where appropriate, the date of removal from office.

(2) At the same time as submitting its report under paragraph (1), the tribunal shall send a copy of it to the Board member.

St Andrew's House,
Edinburgh
7th March 2003

JAMES WALLACE
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the procedure to be followed by and before a tribunal constituted by and under paragraph 3B of Schedule 2 to the Prisoners and Criminal Proceedings (Scotland) Act 1993. Such a tribunal is constituted to carry out an investigation at the request of the Scottish Ministers in order to ascertain whether a member of the Parole Board for Scotland is unfit for office by reason of inability, neglect of duty or misbehaviour.

Similar Regulations have been made in relation to tribunals that are constituted to carry out investigations into the fitness for office of part-time sheriffs and justices of the peace (S.S.I. 2001/205 and 2001/217).

Before any investigation by a tribunal commences, the Scottish Ministers must give the Board member written notice of the investigation and of the reasons why the investigation has been requested (regulation 3). The Scottish Ministers are given the power to pay the members of the tribunal for carrying out their duties (regulation 4).

Subject to the specific provisions made by the Regulations, the tribunal is free to regulate its own procedure (regulation 6). The Regulations make provision for the tribunal to receive oral or written evidence; for the Board member to make written or oral representations; for such representations to be made personally by the Board member or anyone acting on behalf of the Board member, and for the confidentiality of proceedings before the tribunal (regulation 7). The Regulations also make provision for the procedure to be followed where there is a change in the membership of the tribunal after an investigation has commenced (regulation 5).

The Regulations make provision allowing the tribunal to suspend the Board member from office during the investigation. The tribunal may direct that a Board member so suspended may remain in office for the limited purpose of continuing to deal with proceedings of the Board commenced before the suspension took effect (regulation 8).

The tribunal must send a draft of its findings on the investigation to the Board member and must give the Board member the opportunity to make comments on the draft (regulation 9). On completion of the investigation, the tribunal must submit a written report to the Scottish Ministers and send a copy of it to the Board member. The report must specify the tribunal's findings on the investigation and its decision on whether to order removal of the Board member from office (regulation 10).

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