

2010 No. 164

PRISONS

The Parole Board (Scotland) Amendment Rules 2010

Made - - - - 26th April 2010

Laid before the Scottish Parliament 27th April 2010

Coming into force - - 21st May 2010

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.

Citation, Commencement, Application and Interpretation

1.—(1) These Rules may be cited as the Parole Board (Scotland) Amendment Rules 2010 and come into force on 21st May 2010.

(2) These Rules apply to every case referred to the Board on or after the 21st May 2010.

(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 6 (non disclosure of information)—

- (a) in paragraph (2)(c)(ii), omit “or gist”; and
- (b) omit paragraph (3).

(3) After rule 12 (irregularities), insert—

“12A – Use of a live link

(1) The Board or tribunal may, where it considers that it is in the interests of justice to do so—

- (a) on the application of—
 - (i) the person concerned; or
 - (ii) the Scottish Ministers; or
- (b) on its own motion,

make arrangements for the whole or part of the evidence of a witness, or of the person concerned, to be given through a live link.

^(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 the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

^(b) S.S.I. 2001/315, as amended by paragraph 33 of the Schedule to S.S.I. 2005/445.

(2) Applications under paragraph (1)(a) must be made no later than 7 days after the notification by the Board to the parties of the hearing to which the application relates.

(3) Before deciding to make arrangements for the use of a live link, the Board must give the parties the opportunity to make representations and must consider those representations.

(4) The Board shall give the parties written notice of its decision no later than 7 days (or such shorter time as the parties may agree) before the hearing to which the application relates.

(5) Where the person concerned has requested an interview with the Board in terms of rule 15(3), the Board may, where it considers that it is in the interests of justice to do so, make arrangements for the interview to be conducted through a live link.

(6) In this rule “live link” means any arrangement as the Board may direct by which the person concerned, or a witness is able to—

- (a) be seen and be heard, or be heard, in the proceedings;
- (b) see and hear, or hear, the proceedings,

while not present at the place where the case is being heard.”.

(4) For rule 18(5) (composition of tribunal), substitute—

“(5) In the event of the death or incapacity or unavailability (for whatever reason) of any member of a tribunal (“the absent member”)—

- (a) the chairman of the Board shall, subject to paragraphs (2), (3) and (4), 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 the tribunal and the parties consent, the case will be dealt with or, if a hearing has already commenced, will continue to be dealt with, by the two remaining members of the tribunal.”.

(5) In rule 19(2) (general procedure), for “rule 18(2)” substitute “rule 18(4)”.

(6) In rule 26(2)(h) (attendance at hearing), for “Council on Tribunals” substitute “Administrative Justice and Tribunals Council”.

St Andrew’s House,
Edinburgh
26th April 2010

KENNY MACASKILL
A member of the Scottish Executive

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) amends rule 6 of the principal Rules. Rule 6 of the principal Rules applies where Scottish Ministers or the Parole Board (“the Board”) consider that any written information or document should not be sent or disclosed to the “person concerned” (the prisoner – see rule 2(1) of the principal Rules) because its disclosure would be likely to be damaging on one or more of the grounds set out in rule 6(1)(b).

Rule 2(2)(a) removes the word “gist” in rule 6(2)(c)(ii) of the principal Rules. Where rule 6(2) applies and the Scottish Ministers or as the case may be, the Board, send written notice to the person concerned informing them that certain information has not been sent or disclosed, such a written notice must give the person concerned the substance of the damaging information, as far as is practicable without prejudicing the purposes for which the information was not disclosed.

Rule 2(2)(b) removes rule 6(3) of the principal Rules, so that the provisions of rule 6 are applied to tribunal cases under Part IV of the principal Rules.

Rule 2(3) inserts new rule 12A into the principal Rules to allow the use of a live link (such as a television link) in taking the evidence of the person concerned, or a witness. In order for a live link to be used, it must be considered by the Board to be within the interests of justice. A live link may be applied for by the person concerned or the Scottish Ministers, or be granted on the Board or tribunal’s own motion. The parties to the case must be given the opportunity to make representations to the Board before a decision is made to use a live link. Live links may also be used to conduct interviews with the person concerned under rule 15(3).

Rule 2(4) substitutes paragraph (5) of rule 18 of the principal Rules, so that if for any reason any member of a tribunal becomes unavailable to sit in a given case (for example through illness), the chairman of the Board can, subject to paragraphs (2), (3) and (4) of rule 18, appoint another member to take the place of the absent member. If the absent member of the tribunal is a member other than the chairman, then with the consent of the parties, the case may be dealt with, or continue to be dealt with in cases where a hearing has already commenced, by the remaining two members of the tribunal.

Rule 2(5) corrects an erroneous reference in the principal Rules. The reference to rule 18(2) in rule 19(2) should correctly be to rule 18(4).

Rule 2(6) substitutes the reference in rule 26(2)(h) to the Council on Tribunals with a reference to the Administrative Justice and Tribunals Council (“the AJTC”). The AJTC was established by section 44 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 45 of that Act abolished the Council on Tribunals.

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