

2012 No. 167

PRISONS

The Parole Board (Scotland) Amendment Rules 2012

Made - - - - 24th May 2012

Laid before the Scottish Parliament 28th May 2012

Coming into force - - 26th June 2012

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

3. In rule 2(1)—

(a) after the definition of “damaging information”, insert—

““electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000 (c.7)”;

(b) after the definition of “tribunal” insert—

““working day” means any day other than a Saturday, Sunday or public holiday”.

4. In rule 5—

(a) in paragraph (1), for “2 weeks” substitute “10 working days”;

(b) in paragraph (2)—

(i) for “2 weeks” substitute “10 working days”; and

(ii) for “12 weeks” substitute “60 working days”.

(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 and S.S.I. 2011/133.

5. In rule 11, for “by facsimile transmission,” substitute “as an electronic communication, by fax,”.

6. In rule 12A—

- (a) in paragraph (2) for “7 days” substitute “5 working days”;
- (b) in paragraph (4) for “7 days” substitute “5 working days”.

7. In rule 14—

(a) for paragraph (1) substitute—

“(1) Subject to 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.”;

(b) in paragraph (2)—

- (i) omit “Without prejudice to rule 15(3)”;
- (ii) after “case” where it first occurs, insert “, other than a case that is to be dealt with by way of an oral hearing under rule 15A,”;
- (iii) for “3”, substitute “2”;

(c) in paragraph (7)—

(i) for sub-paragraph (a), substitute—

“(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”;

(ii) in sub-paragraph (b) omit “and the person concerned consents”;

(d) after paragraph 7, insert—

“(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.”.

8. In rule 15—

- (a) in paragraph (2), omit sub-paragraph (b);
- (b) omit paragraph (3).

9. In rule 15A—

- (a) in paragraph (2)(b), for “determinate sentence prisoner” substitute “a person subject to a determinate sentence”;
- (b) in paragraph (2)(c), for “prisoner” substitute “person”.

10. In rule 15B—

- (a) in paragraph (1), for “21 days” substitute “15 working days”;
- (b) in paragraph (2), for “21 days” substitute “15 working days”;
- (c) in paragraph (3), for “7 days” substitute “5 working days”;
- (d) in paragraph (4)(b), for “7 days” substitute “5 working days”.

11. In rule 15E(7), for “7 days” substitute “5 working days”.

12. In rule 15H—

- (a) in paragraph (1), omit from “provided that”, to the end;
- (b) in paragraph (2)(b), after “hearing”, insert “, or as the case may be, the chairman of the Board if, after the case has been dealt with, the chairman of the hearing is unavailable for whatever reason”;
- (c) in paragraph (2)(c), for “14 days” substitute “10 working days”;

(d) 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(6) for the purpose of hearing that case under rule 15A.”.

13. For rule 16, substitute—

“16. Decision

(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) 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 in terms of rule 14(2) 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.”.

14. In rule 18(5)(b), omit “and the parties consent”.

15. In rule 19(4), for “14 days” substitute “10 working days”.

16. In rule 21—

(a) in paragraph (1), for “3 weeks” substitute “15 working days”;

(b) in paragraph (2), for “3 weeks” substitute “15 working days”;

(c) in paragraph (3), for “7 days” substitute “5 working days”;

(d) in paragraph (4)(b), for “7 days”, substitute “5 working days”.

17. In rule 28—

(a) in paragraph (1), omit from “provided that”, to the end;

(b) in paragraph 2(b), after “tribunal”, insert “, or as the case may be, the chairman of the Board, if, after the case has been dealt with, the chairman of the tribunal is unavailable for whatever reason”;

(c) in paragraph 2(c), for “14 days”, substitute “10 working days”;

(d) after paragraph (2), insert—

“(3) Where the tribunal 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 to form a new tribunal in terms of rule 18(1) for the purpose of dealing with that case.”.

18. In the Schedule, for paragraph 5 substitute—

“5.—(1) In a Part IV case—

(a) a copy of the judgement of the High Court appeal by the prisoner against his current sentence or the conviction on which that sentence was imposed;

(b) a copy of any decision recorded by the Board under rule 28 in connection with any previous referral to the Board;

(c) a copy of any reports contained in a previous dossier which are referred to in any report provided to the Board under paragraph 7 of this Schedule;

(d) a copy of any other information contained in a previous dossier that the Board may require; and

(e) a copy of any written notice by the prisoner that the prisoner does not wish their case to be considered by the Board.

(2) In this paragraph—

“previous dossier” means any dossier sent to the Board under rule 5 of these Rules, rule 5 of the 1993 Rules, or rule 5 of the 1995 Rules in connection with a previous referral;

“previous referral” means any referral of the prisoner’s case to the Board which occurred on or after 4th August 1995.”.

St Andrew’s House,
Edinburgh
24th May 2012

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 3 inserts definitions of “electronic communication” and “working day” into rule 2(1) of the principal rules.

Rule 5 amends rule 11 of the principal rules to allow the sending of documents to the Board to be done by electronic communication.

Rule 7 amends rule 14 of the principal rules to provide that the quorum of the Board in a case dealt with under Part III of the principal rules (other than a case dealt with by an oral hearing under rule 15A) is 2. It remains open to the Board to sit with more members. In the event of the death, incapacity or unavailability of a member in a case being dealt with by 2 members, the chairman of the Board must appoint another member in place of the absent member. Paragraph (c)(ii) removes the requirement for the person concerned’s consent to proceed where there is an absent member of the Board.

Rule 8 amends rule 15 of the principal rules to remove the right of the person concerned to request an interview with a member of the Board before it reaches a decision.

Rule 9 removes references to “prisoner” from Rule 15A.

Rule 12 amends rule 15H of the principal rules to remove the chairman of the hearing’s casting vote in a case where the Board is constituted by an even number of members. Where the Board is constituted by 2 members and those 2 members cannot reach a unanimous decision, the chairman of the Board must appoint 3 other members for the purpose of hearing that case. Rule 12 also amends rule 15A of the principal rules to allow the chairman of the Board to sign decision letters where the chairman of the hearing is the absent member (within the meaning of rule 14(7) of the principal rules).

Rule 13 substitutes a new rule 16 of the principal rules which sets out the ways in which decisions can be reached in Part III cases.

Rule 14 amends rule 18 of the principal rules to remove the requirement for the parties’ consent to proceed in a case where there is an absent member.

Rule 17 amends rule 28 of the principal rules to remove the chairman of the tribunal’s casting vote in a case where the tribunal is constituted by an even number of members. Where the tribunal is constituted by 2 members and those 2 members cannot reach a unanimous decision, the chairman of the Board must appoint 3 other members to form a new tribunal for the purpose of hearing that case. Rule 16 also amends rule 28(2)(b) of the principal rules to allow the chairman of the Board to sign decision letters where the chairman of the hearing is the absent member (within the meaning of rule 18(5) of the principal rules).

Rule 18 substitutes a new paragraph 5(b) in the schedule to the principal rules which deals with the information that is to be included in the dossier sent to the Board under rule 5 of the principal rules.

Rules 4, 6, 10, 11, 12(c), 15, 16 and 17(c) amend references in the principal rules from “days” to “working days”.

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