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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 133**

**PRISONS**

**The Parole Board (Scotland) Amendment Rules 2011**

*Made* - - - - - *21st February 2011*  
*Laid before the Scottish*  
*Parliament* - - - - - *23rd February 2011*  
*Coming into force* - - - - - *1st May 2011*

The Scottish Ministers make the following Rules in exercise of the power conferred by section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(1) 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 2011 and come into force on 1st May 2011.

(2) These Rules apply to all cases referred to the Board on or after the 1st May 2011.

(3) In paragraph (2) “the Board” has the same meaning as in rule 2(1) of the Parole Board (Scotland) Rules 2001(2).

**Amendment of the Parole Board (Scotland) Rules 2001**

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

3. In rule 2(1) (interpretation)—

(a) after the definition of “case”, insert “ “the chairman of a hearing” means the chairman of a hearing appointed under rule 14(6);”;

(b) for sub-paragraph (c) substitute—

“(c) a prisoner—

(i) subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995 who has been recalled to custody under section 17(1) of the 1993 Act; and

(ii) serving the extension period (within the meaning of section 210A(2)(b) of the 1995 Act) of that sentence; and”.

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(1) 1993 c.9. Section 20(4) was amended by the Crime and Disorder Act 1998, 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).

(2) S.S.I. 2001/315, as amended by paragraph 33 of the Schedule to S.S.I. 2005/445; and S.S.I. 2010/164.

4. In rule 14 (composition of Board), after paragraph 5, insert—
- “(6) If a case is determined to be dealt with by way of an oral hearing under rule 15A, the members of the Board appointed under paragraph (2) must include either—
- (a) a person who holds or has held judicial office; or
  - (b) a solicitor or advocate of not less than 10 years standing,
- and the chairman of the Board will appoint that person to be chairman of the hearing.
- (7) In the event of the death or incapacity or unavailability (for whatever reason) of any member of the Board appointed under paragraph (2) (“the absent member”)—
- (a) the chairman of the Board may, subject to paragraphs (4) and (5), 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 a hearing, and the person concerned consents, the case will be dealt with or, if a hearing under rule 15A has already commenced, will continue to be dealt with, by the two remaining members of the Board.”.

5. After rule 15 (procedure) insert—

**“15A. Oral hearings**

(1) If it considers that it is in the interests of justice to do so, the Board may—

    - (a) on the application of the person concerned; or
    - (b) of its own motion,

determine to deal with the case by way of an oral hearing.

(2) A determination under paragraph (1) may only be made—

    - (a) if a case is referred to the Board by the Scottish Ministers under section 17(3) of the 1993 Act; or
    - (b) if the release of a determinate sentence prisoner is to be considered in terms of section 1(3) of the 1993 Act.
    - (c) if the release of a prisoner who is subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995, and who has been recalled to custody while serving the custodial term (within the meaning of section 210A(2)(a) of the 1995 Act), is to be considered in terms of section 3A of the 1993 Act.

#### **Notice of hearing**

**15B.**—(1) Subject to paragraph (2), the Board must give the person concerned, and any person required or authorised to attend the hearing by virtue of rules 15C, 15D or 15E, not less than 21 days’ notice of the date, time and place of the hearing or such shorter notice to which those persons may consent.

(2) Unless the persons mentioned in paragraph (1) consent, the hearing must take place not earlier than 21 days after the expiry of the period within which the prisoner may send written representations to the Board under rule 7.

(3) The Board may vary any notice given under paragraph (1) and must give the person concerned and any person required or authorised to attend the hearing by virtue of rules 15C, 15D or 15E not less than 7 days’ (or such shorter time as those persons may agree) notice of any such variation, provided that any altered hearing date must not (unless those persons agree) be before the date notified under paragraph (1).

(4) The Board may from time to time adjourn the hearing and—

- (a) in the case where the date, time and place of the adjourned hearing are announced before the adjournment, no further notice will be required; and
- (b) in any other case, the Board must give the persons mentioned in paragraph (1) not less than 7 days' (or such shorter time as those persons may agree) notice of the date, time and place of the adjourned hearing.

#### **15C. Representative**

(1) Subject to paragraph (3), the person concerned may be represented at the hearing by any person whom he or she has authorised for that purpose.

(2) Not later than the expiry of the period within which the person concerned may send written representations to the Board under rule 7, the person concerned must give the Board written notice of the name, address and occupation of any person authorised in accordance with paragraph (1).

(3) The Board may refuse to permit a person to represent a person concerned at the hearing, if it is satisfied that there are good and sufficient reasons for doing so.

(4) If the person concerned does not authorise a person to act as his or her representative, the Board may, with his or her agreement, appoint someone to act on his or her behalf.

#### **15D. Authorisation of persons to attend a hearing to give evidence or to produce documents**

(1) If the person concerned wishes to call any person to attend a hearing under rule 15A to give evidence, or to produce documents which relate to any matter in question at such a hearing, he or she must make a written application to the Board to authorise that person to attend the hearing to give evidence or to produce documents.

(2) An application under paragraph (1) must be made before the expiry of the period within which the person concerned may send written representations to the Board under rule 7.

(3) Any application under paragraph (1) must give the name, address and occupation of each person in respect of whom the application is made and a statement of what the general nature of his or her evidence is likely to be.

#### **15E. Citation of persons to attend a hearing to give evidence or to produce documents**

(1) Subject to paragraph (2), the Board may by notice in writing require any person ("a cited person") who has prepared or has contributed to the preparation of a document included in the dossier provided by the Scottish Ministers under rule 5 or is responsible for work referred to in such a document ("a relevant document"), to attend a hearing under rule 15A and to give evidence or to produce further documents.

(2) The power under paragraph (1) applies only if—

- (a) the person concerned has, in accordance with rule 7 or otherwise, submitted representations intending to challenge the factual accuracy of information contained in a relevant document; and
- (b) the Board considers that it cannot resolve the matter without hearing evidence from a cited person or seeking the production of further documents.

(3) If the Board requires the attendance of a cited person in accordance with paragraph (1), the Board must inform that person of the general nature of the evidence, documents, or other information that the Board is likely to require.

(4) Information provided by the Board under paragraph (3) does not affect any powers the Board has to seek evidence, or to require the production of documents, on any matter it considers necessary to enable the determination of a case.

(5) If a hearing under rule 15A has commenced, the Board may adjourn the hearing to enable the attendance of any person or production of any documents in accordance with this rule.

(6) A cited person may make a written application to the Board to authorise another person, or persons, to attend the hearing or to produce documents instead of, or in addition to, a cited person.

(7) An application under paragraph (6) must be made no later than 7 days after a notice under paragraph (1) is received by a cited person.

(8) An application under paragraph (6) must give the name, address and occupation of each person in respect of whom the application is made, and must give a statement of what the general nature of his or her evidence is likely to be.

(9) Any person who makes an application under paragraph (6) must, at the same time the application is made, send a copy of that application to the person concerned.

(10) The chairman of a hearing may grant or refuse an application under paragraph (6) and must give a cited person, and each person in respect of whom the application is made, written notice of that decision and, where the application is refused, of the reasons for that decision.

(11) If any written notice requiring any person to attend a hearing to give evidence or to produce any documents is made by virtue of this rule, the Board will—

- (a) send the notice signed by the chairman of a hearing to the person who is named in the notice as the person subject to the requirement specified;
- (b) send a copy of the notice to the person concerned.

#### **15F. Attendance at hearing**

(1) The hearing must be held in private.

(2) No person is entitled to attend the hearing unless that person is—

- (a) the person concerned;
- (b) a representative of the person concerned; or
- (c) any person who is authorised by the chairman of a hearing to attend the hearing under rule 15D or rule 15E.

#### **15G. Procedure at hearing**

(1) At the beginning of the hearing, the chairman of a hearing will explain the order of preceding which the Board proposes to adopt at the hearing.

(2) Subject to this rule, the Board may conduct the hearing in such manner as it considers most suitable for the clarification of the issues before it and generally to the just handling of the proceedings; it must, so far as appears to it appropriate, seek to avoid formality in the proceedings.

(3) Without prejudice to any other powers it may have, the Board may exclude from the hearing, or any part of it, any person whose conduct has disrupted or is likely, in the opinion of the Board, to disrupt the hearing.

(4) The Board may consider any document or information notwithstanding that such document or information would be inadmissible in proceedings before a court of law but no person shall by virtue of these Rules be compelled to give any evidence or to produce any document which he or she could not be compelled to give or produce in proceedings before a court of law.

#### **15H. Decision**

(1) The decision of the Board in a case dealt with under rule 15A(1) may be taken by a majority and the decision must record whether it was unanimous or taken by a majority, provided that, where the Board is constituted by an even number of members, the chairman of a hearing is to have a second or casting vote.

(2) The decision of the Board is to be recorded in a document which must—

- (a) contain a statement of the reasons for the decision;
- (b) be signed and dated by the chairman of a hearing; and
- (c) be sent to the person concerned and the Scottish Ministers not later than 14 days after the end of the hearing.”.

St Andrew's House, Edinburgh  
21st February 2011

*KENNY MACASKILL*  
A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Rules amend the Parole Board (Scotland) Rules 2001 (“the principal rules”).

Rule 3 inserts a definition of “chairman of a hearing” in rule 2(1) of the principal rules. A prisoner subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995 (c.46) will have his or her case considered under Part IV of the principal rules only where he or she is within the extension period (within the meaning of section 210A(2)(b) of that Act) of that extended sentence. Rule 3 also amends the meaning of “prisoner” in relation to a Part IV case, in rule 2(1)(c) of the principal rules.

Rule 4 inserts new paragraphs (6) and (7) into section 14 of the principal rules. Paragraph (6) requires the chairman of the Board to appoint one of the members appointed under rule 14(2) as the chairman of a hearing. Paragraph (7) provides that, in the event of the death, incapacity or unavailability of a member of the Board appointed under rule 14(2), the chairman of the Board may appoint another member of the Board in their place. If the absent member is a member other than the chairman of a hearing, and if the person concerned consents, his or her case may be dealt with by the remaining 2 members of the Board, and if an oral hearing under rule 15A has already commenced, the hearing may continue before the remaining 2 members.

Rule 5 inserts new rules 15A to 15H into the principal rules. The new rules make provision for the holding of an oral hearing in certain cases under Part III of the principal rules.

New rule 15A inserts provision into Part III of the principal rules for the holding of an oral hearing where the re-release of a recalled determinate sentence prisoner whose case has been referred to the Board under section 17(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”) is being considered. An oral hearing may also be held where the release of a determinate sentence prisoner is to be considered in terms of section 1(3) of the 1993 Act, or where the release of an extended sentence prisoner, who has been recalled to custody under section 3A of the 1993 Act while serving the custodial term of that sentence, is to be considered. Such a hearing may take place either on the application of the person concerned or on the Board’s own motion. The Board must decide whether the holding of an oral hearing is in the interests of justice.

New rule 15B provides when notice of an oral hearing must be given.

New rule 15C provides that the person concerned may be represented at the hearing.

New rule 15D makes provision for the person concerned to call any person to attend a hearing or produce documents that relate to the matter in question at such a hearing.

New rule 15E provides that the Board may cite witnesses to attend oral hearings, or to produce further documents. This power is only available where the person concerned has challenged the factual accuracy of information contained in a document before the Board, and the Board considers that it cannot resolve the matter without hearing evidence from the person cited.

The Board must, when requiring the attendance of a person, or the production of documents, inform that person of the nature of the information that the Board wishes to hear evidence on, or the documents the Board wish to see. A person who is cited under rule 15E may make a written application to the Board to allow another person to give evidence in their place, or in addition to them.

New rule 15F sets out who may attend an oral hearing.

New rule 15G provides that the Board may conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it, and that it must, where appropriate, seek to avoid formality in the proceedings.

New rule 15H sets out how the Board is to take a decision in a case heard by way of an oral hearing.