

EXPLANATORY MEMORANDUM TO

The Parole Commissioners' (Amendment) Rules (Northern Ireland) 2021 2021 No. 138

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Article 100 (5) of, and paragraph 4 of Schedule 4 to the Criminal Justice (Northern Ireland) Order 2008 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 The Statutory Rule amends Rule 22 of The Parole Commissioner's Rules (Northern Ireland) 2009. Rule 22 is concerned with the location and privacy of oral parole hearings and prohibits information being made public relating to decisions reached by Parole Commissioners regarding prisoners' release from custody.
- 2.2 The new rule will enable registered victims or other persons to make a request for a summary of the reasons for a final direction of a single Commissioner or a decision of a panel made in oral proceedings to be produced and disclosed, unless the single Commissioner or the chairman of the panel considers there are exceptional circumstances why a summary should not be produced for disclosure.

3. Background

- 3.1 In 2018, a number of parties legally challenged the decision of the Parole Board of England and Wales to release an individual from custody - DSD and NBV & Ors R (On the Application Of) v [2018] EWHC 694 (Admin) (28 March 2018). One key element of the challenge related to the Rules in force at the time which prevented the disclosure of information relating to proceedings of the Parole Board.
- 3.2 A key factor was the fundamental right of access to the court e.g. the ability for a victim to challenge a release decision by bringing judicial review proceedings. The Court accepted that if the decision and Parole proceedings were entirely private, then the option of judicial review was effectively barred. In short, the court held that there is no objective necessity for a rule which stifles the provision

of all information relating to proceedings of the Parole Board, regardless of the justified public interest in any particular set of proceedings and of the fact that not all information needs to be safeguarded. Accordingly, the Ministry of Justice amended the Rules on 22 May 2018 to remove the blanket prohibition on the disclosure of information about Parole Review proceedings.

- 3.3 The equivalent rule to Rule 25 in Northern Ireland is Rule 22 of The Parole Commissioner's Rules (Northern Ireland) 2009. The purpose of this amendment is therefore to bring Rule 22 into line with jurisprudence derived from the High Court judgment in England and Wales and so ensuring adherence to the open justice principle.

4. Consultation

- 4.1 The Department carried out a targeted consultation with the Parole Commissioners Northern Ireland, Law Society Northern Ireland, Bar Council Northern Ireland, Probation Board Northern Ireland and the Northern Ireland Prison Service. No objections were raised to the proposed amendment and there has been ongoing liaison between these agencies to ensure all parties are operationally ready to give effect to the amendment.

5. Equality Impact

- 5.1 Consideration was given to compliance with section 75 of the Northern Ireland Act 1998. As the amendment will apply equally to all registered victims and any other persons, the Department concluded that this matter will not have a differential impact on any of the section 75 categories. On that basis, the measure was screened out.

6. Regulatory Impact

- 6.1 The Department considered that the amendment has potential to impact on data protection principles however it will be a matter for PCNI to ensure access to decisions does not unlawfully interfere with these principles. There will be no impact on costs to business, statutory or voluntary sector.

7. Financial Implications

- 7.1 There may be financial implications for PCNI to implement this amendment. Any identified additional costs will be subject to approval of a full business case.

8. Section 24 of the Northern Ireland Act 1998

8.1 The proposed legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 This measure does not replicate, nor is there a requirement to maintain parity with, legislation in other administrations.

11. Additional Information

11.1 Not applicable.