


Data Protection Impact Assessment

The Parole Board (Scotland) Amendment Rules 2021

Introductory information

Summary of proposal:	The Parole Board (Scotland) Amendment Rules 2021 makes amendments to the Parole Board (Scotland) Rules 2001
Your department:	Justice
Contact email:	Sandra.wallace@gov.scot
Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Secondary
What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Drafting The drafting process is in the final stages and is to be completed by end December. We intend to lay the SSI in Parliament on 12 January 2020.
Have you consulted with the ICO using the Article 36(4) form (please provide a link to it)?	Yes  Article 36 4 enquiry form - parole propo
If the ICO has provided feedback, please include this.	
Do you need to hold a public consultation and if so has this taken place	A public consultation (Transforming Parole in Scotland) was held between December 2018 and March 2019. The amendments have been developed in conjunction with the Parole Board for Scotland. We have also shared them with the Transforming Parole Implementation Group. The issues picked up in the public consultation will be addressed operationally by the Board around processing special category information and compliance with data protection legislation. SG has met the need to consult with ICO through the A36(4) process.
Were there any comments/feedback from the public consultation about privacy, information or data protection?	Yes There was some comment that 'sensitive' personal information should not be shared such as health or addiction issues.

	<p>There was also comment that the need to ensure compliance with the Data Protection Act 2018 and European Convention on Human Rights 1998 (ECHR), in particular article 8 – the right to privacy - was important. Also mentioned was the need to consult with the Information Commissioner’s Office on any proposals to disclose information about the prisoner to the victim, their family, other specified persons or the public at large by means of proactive publication.</p>
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Version	Details of update	Version complete by	Completion Date
0.1	First draft	Sandra Wallace	6/11/20
	Consultation with DPO		9/11/20
0.2	2 nd draft	Sandra Wallace	10/11/20
0.3	Final draft	Sandra Wallace	13/11/20
0.4	Authorisation	Cat Dalrymple	13/11/20
	Feedback from ICO		23/12/20
0.5	Revised following feedback	Sandra Wallace	31/12/20

	Question	Comments
	<i>Article 35(7)(a) – “purposes of the processing, including, where applicable, the legitimate interest pursued by the controller”</i>	
1	<p>What issue/public need is the proposal seeking to address? What policy objective is the legislation trying to meet?</p>	<p>The policy intention is to increase the openness and transparency of the parole system.</p> <p>The legislation will provide for: New Rule 26A which sets out the procedure for a victim, who is registered with the Victim Notification Scheme, to request to observe (by video link) a parole hearing in a Part IV case and the manner by which attendance will be allowed or otherwise not allowed.</p> <p>In addition, new rule 28A provides that the Parole Board must, when deciding to release a prisoner in a Part IV case, publish, by whatever means it thinks appropriate, an anonymous and redacted summary of the decision, setting out the reasons the decision was made. As this will not involve identifying an individual we consider that it will not involve processing personal data and does not need to be covered in the DPIA.</p>
	<i>Article 35(7)(c) “assessment of the risks to the rights and freedoms of data subjects” and Article 35(7)(b) “...necessity and proportionality of the processing operations”</i>	
2	<p>Does your proposal relate to the processing of personal data? If so, please provide a brief explanation of the intended processing and what kind of personal data it might involve. Who might be affected by the proposed processing?</p> <p>Is the processing considered necessary to meet a policy aim? Is there a less invasive way to meet the objective (for example, anonymising data, processing less data).</p> <p>Please also specify if this personal data will be sensitive or special category data or relate to criminal convictions or offences</p>	<p><i>Victim Attendance at Hearing</i></p> <p>The provisions set out a specific procedure for observing a hearing if the person is a victim, family member of victim or a supporter of the victim or family member. As mentioned below, this is not a new procedure as observers are already permitted within the rules (current rule 26). The provisions are provided to make it clear and transparent what the process is in relation to a victim, family member of a victim or a supporter. A person registered with the Victim Notification Scheme already has their contact details recorded within the Parole Board Case Management System to enable them to be informed of plans for parole, release and any licence conditions that affect them. The data is held by the Parole Board for Scotland and only used where necessary</p>

(Note: 'special categories' means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person's sex life or sexual orientation and sensitive personal data means criminal information or history)

to contact the registered victim. A registered victim may be 'a victim' or the 'family member of a victim'.

A victim or family member will have to apply in writing to observe a hearing and provide personal data relating to themselves (such as name, address contact number or email) for the purpose of identification for the application and observation of the hearing and to ensure their data matches that held on the VNS. If the victim or family member wishes to be accompanied by a supporter, that person's personal data (name, address and contact details) will also be provided to the Parole Board. As the Data Controller all personal data will be disposed of by the Parole Board in line with GDPR. The lawful basis for processing personal data under Article 6 of the GDPR and for special category data under Article 9 is for The Parole board to set out, however, we are assured by the Parole Board that it has the necessary arrangements in place to meet their obligations under these articles.

The Parole Board will require to process that data for the purpose of 1) Advising the prisoner about the victim's request, 2) Making a decision about attendance, and 3) communicating with the victim and agreeing attendance of any supporter.

Some of the applicant's personal data (such as, their name) will be provided to the prisoner as part of this processing. This data will generally be restricted to the identity of the applicant, and in some cases a note of any comments or reasons they have provided to support their application. Sensitive personal data will not require to be provided for this purpose. Personal data of supporters will not be provided to the prisoner.

This is considered to be necessary as the prisoner may wish to make representations about the victim's

attendance, which the Parole Board will consider to ensure there is no adverse impact on the fairness of proceedings to the prisoners. The Parole Board should only disclose information to the extent necessary to enable the prisoner to make such representations. However the Parole Board also has an ability (Rule 6 of the existing Rules) to redact or withhold information from the prisoner where there are overriding reasons to do so.

Note that this is an optional process and if a victim does not wish to attend the hearing, or does not wish to provide data to the Parole Board for that purpose there are other means for them to find out about the Parole Board's consideration of the case, including the existing Victim Notification Scheme and the new provision made in this SSI for publication of summaries of Parole Board decisions.

Observation of the parole hearing could result in the people observing the hearing listening to personal data regarding the prisoner involved in the case. This could result in the observer hearing data regarding criminal convictions and other matters. These matters however, will already have been discussed in the courts when the person was on trial and sentenced.

The process will allow the observer(s) to hear first-hand the matters the Parole Board take into account when considering release. Provision is made in the new Rule for the Parole Board to exclude a victim or other observer from any part of the hearing which it considers requires to be confidential.

Observation will be by video-link and only in exceptional circumstances would observation in person be permitted.

As currently happens, requests to observe a hearing will be made by written application on a case-by-case basis.

		<p>As mentioned above, the Parole Board already has the power to allow observers to attend hearings (Rule 26), which already requires the processing of personal data for that purpose. This amendment sets out a specific procedure where the observer is a victim or family member of a victim so it is clear what the process for attendance is. This increases the procedural safeguards available in relation to the processing of data relating to both the observer and the prisoner.</p> <p><i>Publication of Summary and Reasons for Decision to Release</i></p> <p>The Parole Board will be required to publish in such manner as it considers appropriate an anonymised and redacted summary of the decision to release a prisoner in a Part IV case only. The summary may contain the matters they took into account when reaching their decision but will not contain any personal detail relating to the prisoner concerned or the victim of the crime.</p>
<p><i>Part of your consideration in relation to Article 35(7)(a) and (b) should be in respect of ECHR. “</i></p>		
<p>3</p>	<p>Will your proposal engage any rights under ECHR, in particular Article 8 ECHR? How will the proposal ensure a balance with Article 8 rights? If the proposal interferes with Article 8 rights, what is your justification for doing so – why is it necessary?</p> <p>Article 8 ECHR: Right to respect for private and family life</p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for</p>	<p>The changes to the rules have been developed in conjunction with the Parole Board. We have met with them several times to discuss the changes and allow them to comment on them to ensure they will be meeting their ECHR obligations.</p> <p><i>Victim attendance at Hearing</i></p> <p>The prisoner will have been on trial and sentenced by the court so the matters which will be heard by the observer will already have been discussed in a public forum and some detail is likely to have been reported in the media. We therefore consider these proposals are consistent with such existing proportionate interferences with article 8 rights that are necessary for the operation of the criminal justice system in respect of individuals convicted of serious criminal offences.</p>

	<p>the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>You may also wish to consider Article 6 right to a fair trial (and rights of the accused) Article 10 right to freedom of expression Article 14 rights prohibiting discrimination Or any other convention or treaty rights?</p>	<p>The Chair of the hearing will be able to decline an application from an observer if they consider the applicant is likely to be disruptive or they consider the prisoner is likely not to be able to fully participate in the hearing.</p> <p>The prisoner will be able to make representations about observer's attendance at hearings which the tribunal Chair will take into account when deciding whether or not to agree to the application. This is in order to ensure there is no unfairness (in terms of Article 6) to the prisoner as a result of the victim's attendance.</p> <p><i>Publication of Summary and Reasons</i></p> <p>Summaries will be redacted so individuals are not identifiable. However, the prisoner's sentence and crimes will be a matter of public record when on trial and sentenced. The amendment to the rules will only require the publication of summaries where the decision is to release the prisoner, therefore there should be no effect on future hearings. The Parole Board may also choose to publish anonymised case studies if it considers it as a case of significant interest such as those that involve a judicial review.</p>
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i> <i>Note Article 32 GDPR for s.4 also</i></p>		
<p>4</p>	<p>Will the proposal require regulation of :</p> <ul style="list-style-type: none"> <input type="checkbox"/> technology relating to processing <input type="checkbox"/> behaviour of individuals using technology 	<p>n/a</p>

	<ul style="list-style-type: none"> <input type="checkbox"/> technology suppliers <input type="checkbox"/> technology infrastructure <input type="checkbox"/> information security <p>(Non-exhaustive examples might include whether your proposal requires online surveillance, regulation of online behaviour, the creation of centralised databases accessible by multiple organisations, the supply or creation of particular technology solutions or platforms, or any of the areas covered in questions 4a or 4b.)</p>	
4a	<p>Please explain if the proposal will have an impact on the use of technology and what that impact will be.</p> <p>Please consider/address any issues involving:</p> <ul style="list-style-type: none"> ○ Identification of individuals online (directly or indirectly, including the combining of information that allows for identification of individuals, such as email addresses or postcodes); ○ Surveillance (necessary or unintended); ○ Tracking of individuals online, including tracking behaviour online; ○ Profiling; ○ Collection of 'online' or other technology-based evidence ○ Artificial intelligence (AI); ○ Democratic impacts e.g. public services that can only be accessed online, voting, digital services that might exclude individuals or groups of individuals <p>(Non-exhaustive examples might include online hate speech, use of systems, platforms for delivering public services, stalking or other regulated behaviour that might engage collection of evidence from online use, registers of people's information, or other technology</p>	n/a

	proposals that impact on online safety, online behaviour, or engagement with public services or democratic processes.)	
4b	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	n/a
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>*Note exemptions from GDPR principles where applicable</i></p>		
5	Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, , victim information or other monitoring of online behaviour)	<p><i>Victims attendance at Hearing</i></p> <p>Observers may hear information about previous criminal activity during the hearing. Where this is the case it would be confined to the prisoner concerned and any other information concerning other individuals involved in the criminal activity will be redacted or withheld under Rule 6 – Non-disclosure. There is provision in the procedure for observers to be excluded from parts of the hearing where sensitive information may be discussed, which clarifies that the observers access to the proceedings is not unlimited. This provides an additional safeguard to sensitive data or other confidential information.</p> <p><i>Publication of Summary and Reasons</i> n/a</p>
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i></p>		
6	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties,	n/a

	elderly people? (Please specify) In what way?	
7	<p>Will the Bill necessitate the sharing of personal data to meet the policy objectives? For example</p> <ul style="list-style-type: none"> ○ From one public sector organisation to another public sector organisation; ○ From a public sector organisation to a private sector organisation, charity, etc.; ○ Between public sector organisations; ○ Between individuals (e.g. practitioners/ service users/sole traders etc.); ○ Upon request from a nominated (or specified) organisation? <p>If so, does the Bill make appropriate provision to establish a legal gateway to allow for sharing personal data Please briefly explain what the gateway will be and how this then helps meet one of the legal basis under Article 6 of the GDPR.</p> <p>(Please provide details of data sharing, e.g. if there is a newly established organisation, if it is new sharing with an already established third party organisation, if it is with a specified individual or class of individuals, or any other information about the sharing provision/s. State what is the purpose of the sharing and why it is considered to be necessary to achieve the policy aims.)</p>	n/a (not a Bill)
8	Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to views the	It is likely the prisoner's case will have been subject to media coverage both in the past and in relation to the potential for the person to be released at the hearing. The publication of decision summaries is likely to be a matter of

	<p>measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards</p> <p>and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>public interest, but these are to be anonymised so do not directly relate to the processing of personal data.</p> <p>We do not consider there will be any unintended consequences as the prisoner is likely to have already been the subject of publicity when on trial and sentenced.</p> <p>The 2001 Rules (as currently in place) already provide a requirement of confidentiality in relation to information around Parole Board cases and hearings. The observers will be advised of this legal requirement and required to sign a confidentiality agreement before being permitted to observe the hearing. The default will be to observe by video link leading to possibility of shutting off the observers if it was felt required for any reason</p> <p>There are new safeguards built in to the provision to ensure that data processing is restricted where required. The Chair of the hearing will be able to decline an application from an observer if they consider that the person attending would result in risks to confidentiality, or other adverse effects on the prisoner, the other participants, and the procedural fairness of the hearing.</p> <p>The prisoner will be able to make representations about an observer's attendance at hearings which the tribunal Chair will take into account when deciding whether or not to agree to the application.</p>
9	<p>Are there consequential changes to in other legislation that need to be considered as a result of the t proposal or the need to make further subordinate legislation to achieve the aim?</p>	<p>n/a</p>

	(This might include, for example, regulation or order making powers; or provisions repealing older legislation; or reference to existing powers (e.g. police or court powers etc.).	
10	Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?	No

Summary – Data Protection Impact Assessment

11	Do you need to specify a Data Controller/s?	The Parole Board for Scotland will be the Data Controller – a role they already carry out for data relating to Parole Hearings and for those attending them.
12	Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.	<i>Victim attendance at Hearing</i> The Parole Board for Scotland already has established processes and systems in place for data security, including retention policies etc. The processing of data relating to attendance at a hearing is not a new activity. The safeguards in that system will apply to the data processed in relation to these new provisions. No recording or keeping a record of the procedures will be permitted by observers who will have to make an undertaking not to do so before attending the hearing. The video-conferencing facilities will be arranged by the Parole Board to ensure that security and compliance can be monitored. Existing legal obligations of confidentiality will continue to apply to any personal data disclosed to the observers during the hearing. A member of Parole Board support staff will be in attendance to offer technical support and ensure the procedures are being adhered to.

13	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	<p>The purpose of the processing of personal data about victims wishing to observe Parole Board hearings is to enable a decision about their attendance at the hearing.</p> <p>It is not expected that this processing will have any impact on the Parole Board's decision on the parole case itself. It is not intended that the presence of observers will impact on the proceedings. Victims who are registered with the Victim Notification Scheme can already make representations to the Parole Board in writing which sets out their views and is already taken into consideration by the Parole Board. Their participation in hearings will be as silent observers who are not parties to the case.</p>
14	<p>If the proposal involves processing, do you or stakeholders have any relevant comments about mitigating any risks identified in the DPIA including any costs or options, such as alternative measures.</p>	<p>Appropriate risk mitigations are already provided for in the Parole Board's proceedings, including legal obligations of confidentiality, which apply to these new proposals.</p> <p>Individuals are already able to attend Parole hearings as observers, the new proceedings introduce further procedural safeguards which, among other things, ensure that there is a clear procedure applied to decisions about access by victims to information about prisoners.</p> <p>It was considered that by using video link for victim observation of hearings it would be more cost effective than a victim attending in person. Video facilities can more likely be found closer to the location of a person's residence rather than attendance in person at a prison which could also be more traumatic and incur more travel/subsistence costs.</p>

Authorisation

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division or the relevant person in the business area sponsoring the Bill/proposals.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust and has addressed all the relevant issues.

By signing the DPIA report, the IAO is confirming that the impact of the policy has been sufficiently assessed against individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase "Legislative DPIA" and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

I confirm that the impact of these provisions has been sufficiently assessed in compliance with the requirements of the GDPR

Name and job title of a IAO or equivalent	Date each version authorised
Cat Dalrymple Deputy Director Community Justice	13/11/2020