

EXPLANATORY MEMORANDUM TO
THE PAROLE BOARD (AMENDMENT) RULES 2009

2009 No. 408

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the Instrument**

2.1 The purpose of these Rules is to provide the Parole Board with greater flexibility in deploying its resources so as to cope with an increasing workload and reduce delays, particularly in relation to the appointment of oral panels to consider the release of individual prisoners. These Rules also aim to complement the Parole Board's "Intensive Case Management (ICM)" process, which was introduced in January 2008 in order to facilitate the efficient management of cases.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Parole Board Rules are procedural rules covering the timetable and process in respect of certain Parole Board hearings. The current rules, the Parole Board Rules 2004 ("the 2004 Rules"), came into force on the 1st August 2004 and replaced the Parole Board Rules 1997.

4.2 The 2004 Rules were made under an enabling power in section 32(5) of the Criminal Justice Act 1991 (c. 53) which was not exercisable by statutory instrument. Section 32(5) was repealed by the Criminal Justice Act 2003 (c. 44) ("the 2003 Act") and was re-enacted in section 239(5) of the 2003 Act, albeit that rules made under section 239(5) are subject to the negative resolution procedure. These Rules are the first to be made under section 239(5) and rely on section 17(2)(b) of the Interpretation Act 1978 (c. 30) to amend the 2004 Rules; by virtue of section 17(2)(b), the 2004 Rules have effect as if they were made under section 239(5) of the 2003 Act.

4.3 There is one relevant undertaking to Parliament in relation to these Rules. During the debate on 25 June 1991 during the passage of the Criminal Justice Bill, the Government announced its intention that any panel considering the release of a discretionary lifer would include a judge.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The proposed changes to the Parole Board Rules 2004 as incorporated in these Rules are designed to facilitate the timely and efficient review of cases referred to the Board. The workload of the Parole Board has grown steadily over the past 7 years, with a 73% increase in oral hearings between 2002/2003 and 2006/2007. This, together with evolving changes in casework practice, has resulted in serious delays. In order to maximise its capacity to deal with the increased volume of cases and to ensure that decisions are taken within the required timescales more flexible working practices are required. The Parole Board has already introduced new administrative processes to improve case management (the “Intensive Case Management” process) and the Board’s sponsors within the Ministry of Justice are negotiating additional judicial time and both of these initiatives will assist the Board. However, the Board needs greater flexibility in allocating its resources, and in particular in determining the membership of panels, in order to hold the required number of oral hearings.

7.2 A report published in February 2008 by the National Audit Office estimated that only 32% of oral hearings were being convened on time and that the remainder were being delayed. Timely Parole Board reviews of ongoing detention are required by the European Convention on Human Rights and delays could result in prisoners being held in custody for longer than necessary.

7.3 These Rules provide the Board with greater flexibility in determining the size and membership of a panel. Under the current Rules, all panels must have three members and must be chaired by either a judicial or legally qualified member. By removing the requirement for three members the Board will have the capacity to hold more oral hearings. Furthermore, the changes enable the Board to identify the most appropriate member to chair the panel and therefore increase its capacity to convene more panels. Given that lifer cases remain particularly sensitive in the minds of the general public, Judicial members will continue to chair lifer hearings in order to maintain public confidence. However, the Parole Board will not be precluded from appointing judicial members to other panels where that is considered to be appropriate.

7.4 The removal of the need for three-member paper panels to consider cases is not without precedent. Single member panels are already undertaking initial consideration of cases.

7.5 The proposed changes are also designed to facilitate the Board's Intensive Case Management process, which was introduced in January 2008, whereby cases are reviewed by a member of the Board immediately upon receipt of the Secretary of State's dossier of reports. The member identifies any additional material required in time for the oral hearing and sets directions in accordance with the Rules. This early intervention is designed to enable the case to be ready for consideration by a panel within the required timescales and reduce the number of cases deferred. Currently, the Rules allow only for the panel chair to make binding directions. The amendment will give power to the intensive case management member to make directions earlier in the process.

7.6 The current Rules allow prisoners to require an oral hearing even in circumstances where neither the requirement for procedural fairness nor article 5(4) of the ECHR require one. The proposed change - specifying that a prisoner should request, rather than require, an oral hearing before the Board – remedies this by allowing the Board to determine whether an oral hearing is necessary in an individual case, which will depend on what fairness requires in that case.

7.7 The Rules previously allowed the Parole Board 7 days in which to make a decision following an oral hearing. This deadline has proved to be unrealistic given the complexity and detail in drafting reasons for decisions. A panel may well have to deal with up to nine cases at a single prison over the course of two or three days. Each decision must be carefully drafted and approved by all the members of the panel. The additional 7 days reflects the NAO's concerns that chairs were not always consulting other panel members when drafting and issuing decision letters; the additional time will enable all panel members to be fully consulted on the draft decision. It is therefore proposed to extend the period in which the Board must issue its decisions to 14 days.

7.8 The transitional provision makes it clear that these amendments will only apply to hearings which begin on or after 1st April 2009.

- ***Consolidation***

7.9 Sponsorship of the Parole Board passed within the Ministry of Justice, from NOMS to Access to Justice, on 1st April 2008. A review of the status of the PB is currently being undertaken and that consideration of a more wholesale review of the Rules will be undertaken once the review of the Board's status is complete.

8. Consultation outcome

8.1 There is no statutory obligation to consult on amendments to the Parole Board rules and given the changes set out in the Rules are relatively limited and the pressing need to create additional capacity within the Parole Board to

review indeterminate sentence cases in a timely way, it was decided that a full and formal consultation was required.

However, the Parole Board has been informally consulted on the drafting of these changes. It endorses the rationale behind the changes as well as the changes themselves. A number of leading prison / offender organisations were also invited to comment on the proposals. Written responses were received from the Parole Board, The Howard League, Bhatt Murphy (Solicitors), The Association of Prison Lawyers, Heather Morgan (Independent PBM) and Graham Park (Independent PBM). Their views have been taken into consideration. A summary of the responses and the Ministry of Justice's response is available from the MoJ (see contact details at the end of this document)..

9. Guidance

9.1 The proposed changes are self-explanatory. Nevertheless, guidance on the Rules will be provided to prison and probation staff through a Prison Service Order and Probation Circular, both of which will be available on the National Offender Management Service website. A copy of these amendment Rules and guidance relating to them will also be placed on the Parole Board and Ministry of Justice websites.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not anticipated to have any noticeable effect.

10.2 The impact on the public sector is that the Parole Board will have greater flexibility to manage its members and resources.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies is foreseen. The impact on the public sector is that the Parole Board will have greater flexibility to manage its members and resources in order to absorb the increase in its caseload. This will facilitate timely decisions which in turn will facilitate the timely release of those prisoners assessed as safe to be released. This should have a small but positive impact on the prison population.

11. Regulating Small Business

11.1 The legislation does not apply to small business.

12. Monitoring and Review

12.1 These amendments to the Parole Board Rules supplement administrative changes being made to indeterminate sentence prisoner parole processes designed to ensure that 80% of parole cases are considered within the required timescale. The aim is to achieve this target in the financial year 2009/10. The

results will be published on the Parole Board and Ministry of Justice websites and in the Parole Board Annual Report.

13. Contact

David Liddemore at the Ministry of Justice will answer any queries regarding the Instrument. Contact: E-mail David.Liddemore@HMCourts-Service.gsi.gov.uk
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