

EXPLANATORY MEMORANDUM TO
THE PAROLE BOARD (AMENDMENT) RULES 2022

2022 No. 717

1. Introduction

- 1.1 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 This instrument amends the current Parole Board Rules 2019 which came into effect on 22 July 2019. The changes are necessary to deliver a commitment made by the government, namely the ability for the Parole Board of England & Wales to hold public hearings in some limited circumstances. It also sets out the procedural rules for two provisions of the Police, Crime, Sentencing & Courts Act 2022 to create a new power for the Parole Board to set aside its own decisions, and to change the way licence termination is considered for those sentenced to Imprisonment for Public Protection. In addition, the instrument makes provision for circumstances in which the Secretary of State may wish to present the Board with a single view about the suitability of a prisoner for release, taking account of all the written evidence.
- 2.2 The instrument also makes a number of technical additions and changes to the Parole Board Rules which have been identified as necessary to improve the overall performance and efficiency of the parole process.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Criminal Justice Act 2003¹ allows for the making of rules governing the proceedings of the Parole Board by the Secretary of State for Justice. The Rules are periodically amended to reflect changes in procedure and any relevant case law. The current rules were introduced in July 2019. This instrument also sets out procedural

¹s239(5) *Criminal Justice Act 2003*

rules on two provisions in the Police, Crime, Sentencing & Courts Act 2022 which received Royal Assent on 28 April.

7. Policy background

What is being done and why?

7.1 In the 2019 general election manifesto, the government promised to undertake a Root and Branch review of the parole system and to make provision for victims to observe parole hearings in full for the first time. This legislation derives from these commitments and the consultation and stakeholder engagement undertaken as part of the Root and Branch review which was published on 30 March 2022. The review follows on from the recommendations of the Tailored Review of the Parole Board (published in October 2020) and several other key reforms that have been implemented since 2018.

7.2 The content of many rules is similar to the provisions within the Parole Board Rules 2019, however the structure of the rules has been revised leading to changes in numbering. All rules are of general application, except where there is a specific exception.

Principal new and amended rules:

7.3 **Enabling Public hearings:** Rule 15(3) has been amended to remove the previous requirement that all parole hearings must be heard in private. This will enable the Board to consider whether some hearings should be heard in public in some limited circumstances. Once it has been commenced, anyone including prisoners, victims, members of the public or the media will be able to ask the Board to hold a hearing in public and the Chair of the Parole Board will decide whether it is in the interests of justice to do so. Rule 24 provides powers for the panel chair to exclude any person from a hearing in the circumstances prescribed by the rule to facilitate the management and conduct of public hearings. The wording of these rules has been drawn from those which already exist for the First Tier Tribunal (Mental Health).

7.4 **New power to set aside parole decisions:** Rule 28(A) sets out the new process by which the Parole Board can set aside its own final decisions and directions. This may be used in the following circumstances which are prescribed in the Police, Crime, Sentencing & Courts Act 2022:

- Decisions not to direct release and directions to release may be set aside where the Parole Board determines that its decision or direction resulted from an error of law or fact;
- Directions to release only may also be set aside where the Parole Board determines it would not have made the direction if either:
 - information that was not available to the Board when the direction was given had been available; or
 - a change in circumstances relating to the prisoner that occurred after the direction was given had occurred before it was given.

7.5 The power to set aside a release direction may only be used while the prisoner remains in custody awaiting release. The Secretary of State or the prisoner may apply to have a decision set aside, or the Parole Board may do so of their volition. Any requirement on the Secretary of State to give effect to a release direction is suspended

once an application is made or the Board decides to consider setting aside, pending the decision.

- 7.6 **Process for IPP licence terminations:** Offenders who received a sentence of Imprisonment for Public Protection are released on a licence for life. The original terms of the sentence enabled offenders to apply to the Parole Board to have the licence terminated once the period of 10 years from their initial release had elapsed. However, proportionally few have done so.
- 7.7 Provisions in the PCSC Act 2022 now require the Secretary of State to refer all eligible offenders to the Parole Board automatically for consideration of the licence to be terminated. The Board is empowered to direct that the licence should end if they are satisfied that it is no longer necessary for the protection of the public for it to remain in force. Amendments to Rule 31 have been made to reflect the move from offender applications to automatic referral.
- 7.8 **Recommendations made on behalf of the Secretary of State:** Part B of the Schedule to the 2019 Rules required that reports from prison and probation staff must include views on the prisoner's suitability for release. This requirement has been removed from the Parole Board (Amendment) Rules 2022 and prison and probation staff will no longer provide recommendations in any parole cases. Instead, the Secretary of State may decide to submit a single view in a case which takes account of all the written evidence. Single Secretary of State views will mainly, but not exclusively, be used in the top-tier of parole cases as identified in the Root and Branch review (those convicted of murder, rape, terrorism, or causing or allowing the death of a child).

Other new and amended rules:

- 7.9 **Delegation and appointment of functions:** Rule 4 has been amended to enable the delegation of decisions on whether reviews for recalled determinate sentence prisoners should progress to oral hearing.
- 7.10 **The point at which a parole decision is made:** Rules 19, 20, 21, 25 and 28 have been amended to remove uncertainty on the point at which a decision is considered to have been made. These changes have been made following consideration of the comments made by the Divisional Court on this issue in *Dickins v Parole Board [2021] EWHC 1166 (Admin)*. The changes reflect that in all cases a decision must include reasons, but that it is considered made at the point at which the panel have decided the outcome, and not when the decision is issued to the parties.
- 7.11 **Case conferences:** Rule 7 has been amended to make explicit provision for case conferences. This has been added to the Rules to make clear that case conferences are distinct from directions hearings and serve different purposes. It is expected that there will be a case conference prior to any public parole hearing to discuss how it will be managed and whether any evidence needs to be heard in private.
- 7.12 **Withholding sensitive information:** A number of changes have been made to Rule 17. Firstly, amendments have been made to clarify that the Secretary of State's ability to appeal a decision made under this Rule and, if necessary, to withdraw the evidence, is not limited to the initial application. Panel chairs may make multiple decisions about disclosure during the course of a review and the new rule provides that there is a separate right of appeal and withdrawal for each decision that is made (Rule 17(7a)).

- 7.13 Rule 17(15) has been amended to make clear that the Secretary of State’s power to withdraw evidence applies where a panel chair or duty member decides that information should be disclosed to a prisoner or a prisoner’s legal representative.
- 7.14 We have removed the previous requirement that when evidence is withdrawn any panel members who had seen the withdrawn material must not take any further part in the review. The decision whether panel members should be recused in those circumstances will now be a matter for the Parole Board to decide at its own discretion.
- 7.15 **Decision on the papers after a direction for an oral hearing:** Rule 21 has been amended to remove the requirement that decisions to direct a case to oral hearing can only be reversed if new evidence comes to light. We deemed that the threshold for this decision was too high and the amended rule provides that the panel chair or duty member may now direct that a case previously directed to oral hearing can instead be decided on the papers if it is in the interests of justice to do so. Reasons must be provided.
- 7.16 **Decision making by a panel:** Rule 26 has been amended to provide that majority decision-making now applies to all decisions involving a panel comprising more than one member. Previously the ability to make a majority decision applied only to decisions made following an oral hearing.
- 7.17 **Summaries and disclosure:** Rule 27 has been amended to enable the Parole Board to provide a decision summary in instances where it has provided advice to the Secretary of State, rather than only in cases where it has issued a binding decision. The wording of the original rule did not correctly reflect the policy intention nor the Parole Board’s policy towards issuing decision summaries on request. It also gives greater discretion for panel chairs to allow or prohibit the disclosure, recording or publication of proceedings.
- 7.18 **Reconsideration mechanism:** Rule 28 has been updated to add “error of law” to the grounds on which a decision may be reconsidered. The amendments also make serious terrorism offences and decisions on termination of IPP licence eligible to be reconsidered. The provision for IPP licence terminations being eligible for reconsideration will commence separately on 21 September 2022.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or the future relationship.

9. Consolidation

- 9.1 This instrument amends the previous version of the Parole Board Rules and no further consolidation is necessary at this time.

10. Consultation outcome

- 10.1 The government ran a public consultation from 20 October to 1 December 2020 on whether parole hearings should be held in public in some limited circumstances. The government’s response to the consultation was published in February 2021 and made a commitment to amend the Parole Board Rules so that public hearings would be possible. The consultation received 40 responses from a range of stakeholders including members of the public, victims of crime, professionals involved in parole

work, academics, and charities. Overall, the respondents to the consultation were supportive of introducing public hearings as a means to create a more open and transparent parole process.

- 10.2 During the Root and Branch Review of the Parole System, published on 30 March 2022, the Ministry of Justice held workshops with a range of different stakeholders and sought their views to inform the outcome of the review.

11. Guidance

- 11.1 Guidance is published by the Parole Board on aspects of its operation which can be found on its gov.uk pages. HMPPS have published a Policy Framework which details how the parole process is conducted which is publicly available. Updated versions of guidance will be published that incorporates the changes brought forward by this Statutory Instrument.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector. The main bodies that will be impacted are HMPPS and the Parole Board.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it refers to secondary legislation which will not meet the impact threshold of £5 million per year required for a full Impact Assessment.
- 12.4 The ability for the Parole Board to hold public hearings is expected to only apply to between 3 and 5 cases per annum, according to Parole Board estimates. There will be some additional costs to the Parole Board due to an increased administrative burden, venue hire and IT systems to enable public hearings. Some additional costs will also fall on HMPPS through victim support and administrative costs to the Public Protection Casework Section (PPCS), as well as on the Legal Aid Authority (LAA) through the increased lawyer time required for public hearings. Overall, these costs are negligible, with total costs estimated at significantly below £0.1m per annum. Additionally, there will be a one-off transition cost to the Parole Board of £0.1m resulting from upgrading IT systems to adapt to this change. It has not been possible to monetise the benefits of this provision, namely improved confidence and understanding of the Parole Board due to increased openness and transparency resulting from public hearings.
- 12.5 For modelling purposes, changes to the way in which licence terminations are considered for those sentenced to Imprisonment for Public Protection (IPPs) have been assumed to only affect those whose supervision by the Probation Service has been suspended. It is assumed that this cohort would be less likely to apply for licence termination prior to the rule change, since there would be less of a burden on their lives and limited contact with Community Offender Managers (COMs). Additional costs will predominantly fall on the Parole Board due to increased caseloads for oral hearings. There will also be increased administrative costs to HMPPS due to relevant tasks being carried out by the National Probation Service (NPS) and Public Protection Casework Selection (PPCS). Eligible cases are forecast to vary year-on-year, but total costs are estimated to be between £0.1m and £0.2m per annum. There are no monetisable benefits, since it is assumed those affected would not have otherwise been recalled to prison.

12.6 Recommendations made to the Parole Board on behalf of the Secretary of State about a prisoner's suitability for release are expected to apply to a small proportion of cases. Some additional staff resourcing within HMPPS may be needed to fully implement this work to provide a single Secretary of State view in some cases. It has not been possible, however, to quantify the impact of this change.

12.7 No other costs or benefits have been assessed for this instrument because all further impacts are considered negligible.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

14.2 The performance of the Parole Board is monitored by its sponsor within the Ministry of Justice. Quarterly Business Assurance meetings are held at which performance, finance and risk are discussed. In addition, the government announced its intention to create a new senior-level Parole System Oversight Group along with a new Rules Committee and a system-wide third-party assurance regime. These will serve to provide increased scrutiny of the parole system, including the impact of the Parole Board (Amendment) Rules 2022.

15. Contact

15.1 Kevin Breame at the Ministry of Justice. Telephone: 07980919422 or email: kevin.breame1@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Christina Pride, Deputy Director for Bail, Sentencing & Release Unit, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Kit Malthouse MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.