

Title: The Parole Board Rules 2019 IA No: MoJ034/2019 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies: Parole Board, Her Majesty's Prisons and Probation Service (HMPPS) and the Legal Aid Agency	Impact Assessment (IA)			
	Date: 20/06/2019			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
	Contact for enquiries: paroleboardreview@justice.gov.uk			
RPC Opinion: RPC Opinion Status N/A				

Summary: Intervention and Options

Cost of Preferred (or more likely) Option			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£12m	£m	£m	Not a regulatory provision

What is the problem under consideration? Why is government intervention necessary?

On 4 February 2019 the Government published the outcome of its Review of the Parole Board Rules and its response to the public consultation on the Reconsideration of Parole Board decisions. These confirmed the Government's intention to proceed with the creation of a new Reconsideration Mechanism (with which the majority of respondents were in favour) and other changes to the Parole Board Rules coming out of the review. Government intervention via secondary legislation is required to address the concerns and issues about the parole system that were highlighted by the John Worboys case in 2018 – and to reflect the Secretary of State's commitment to bring about reforms which: increase transparency and effectiveness; improve the parole process for victims; and re-build confidence in Parole Board decision making.

What are the policy objectives and the intended effects?

The policy objective is to make changes to the current parole system which will:

- Support a more open and transparent decision making process;
- Introduce a mechanism which will allow release decisions to be challenged and reconsidered by the Parole Board without the need to pursue time-consuming and costly judicial review proceedings;
- Ensure the issues and concerns about the parole system that were highlighted following the Worboys case have been fully addressed.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options are considered in this Impact Assessment:

1. **Option 0: Do nothing.** The Parole Board Rules would remain unchanged and the only available way to challenge a Parole Board decision would be through judicial review, with the associated costs and complexity of bringing a case before the courts. The parole system would continue to operate as before and the improvements identified by the Review of the Parole Board Rules would not be implemented.
2. **Option 1: Implement the Parole Board Rules 2019 and Create a Reconsideration Mechanism.** A Statutory Instrument will create the new Reconsideration Mechanism on which the Government consulted in 2018 and make other improvements identified by the Review of the Parole Board Rules. Option 1 is the preferred approach as this is the only option that will achieve the policy objective and deliver on the commitments the Government has made in its publications of 4 February 2019.

Will the policy be reviewed? Yes. **If applicable, set review date:** June/2020

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	No.			
Are any of these organisations in scope?	MicroNo. No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Robert Buckland

Date:

20/06/2019

Summary: Analysis & Evidence

Policy Option 1

Description: Implementation of the Parole Board Rules 2019 and create a reconsideration mechanism

FULL ECONOMIC ASSESSMENT

Price Base Year 18/19	PV Base Year 19/20	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	£1.1m	£8.8m
High	Optional	£1.9m	£15.6m
Best Estimate		£1.4m	£12.0m

Description and scale of key monetised costs by 'main affected groups'

The main monetised costs will arise from the additional resources (mostly staff) required within HMPPS and the Parole Board to operate the new reconsideration mechanism (processing and responding to applications); the cost of additional parole hearings arising from successful reconsideration applications; and the Legal Aid cost for prisoners with legal representation seeking to challenge decisions. It is estimated that the additional team required in HMPPS will cost c£700k pa; additional Parole Board costs will be in the region of c£200k pa; additional hearings would be c£100k pa; and the impact on Legal Aid costs could be up to c£400k pa. The total monetised cost, therefore, is estimated to be c£1.4m pa. There are no significant monetised costs arising from the other rule changes.

Other key non-monetised costs by 'main affected groups'

Some prisoners (around 370 (19%) of the c1,900 release decisions in scope for reconsideration per annum) may experience a short delay to their release because they cannot be released until the expiry of the 21-day application window for reconsideration. However, for the majority of release decisions in cases eligible for reconsideration, around 1,530 (81%) of the 1,900 cases eligible, it currently takes longer than 21 days to effect the release in practice so there will be no delay to release in those cases. The impact on prison places will be minimal – the equivalent of about 12 places. The additional Victim Liaison Officer (VLO) time and costs depends on the number of victims wishing to make applications: an upper estimate suggests a cost of no more than c£30k for the additional VLO time required.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'

No identified monetised benefits.

Other key non-monetised benefits by 'main affected groups'

The Secretary of State, victims and prisoners will be able to challenge legally flawed parole decisions without having to pursue an onerous and costly judicial review.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

- We have assumed that between 1% and 5% of eligible release decisions (c1,900) may result in an application for reconsideration by the Secretary of State – a range therefore of between 19 and 95 applications a year; and that between 13% and 16% of non-release decisions (c1,900) may attract an application from prisoners (between 239 and 291 applications). Of all the applications for reconsideration (both release and non-release decisions), we estimate that between 27 and 106 will go on to be reconsidered at a further oral hearing.
- We expect the majority of parole decisions to remain sound and will not require reconsideration.
- More generally, we have assumed that the other changes to the Rules will make the parole process more efficient and effective and should not carry significant costs or risks.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: n/a	Benefits: n/a	Net: n/a	
			n/a

Evidence Base (for summary sheets)

A. Background

1. The Parole Board was set up in 1967 to advise the Home Secretary who, at the time, was responsible for making decisions regarding the release of prisoners on licence and their recall to prison. The Parole Board has since evolved, largely in response to case law, from an advisory body into one that is independent, possessing a quasi-judicial function – and whose decisions on release are now binding on the Secretary of State for Justice.
2. The Parole Board is now established, under the Criminal Justice Act 2003, as a body corporate. It has the status of an executive non-departmental body, meaning that although it receives its funding from central government through the Ministry of Justice, its day-to-day operations and decision making are independent. The 2003 Act provides that the Secretary of State for Justice does, however, appoint members of the Parole Board and makes rules governing the proceedings of the Board through the Parole Board Rules.
3. The statutory functions of the Parole Board (as provided for in the Crime (Sentences) Act 1997 and the Criminal Justice Act 2003) include:
 - a) Making decisions on the release of indeterminate sentenced prisoners after the expiry of the minimum period in prison set by the sentencing court – and the release of some determinate sentence prisoners prior to an automatic release date (some extended sentences and discretionary conditional release sentences).
 - b) Where responsible for the initial release of the prisoner, making decisions on the licence conditions needed to manage the offender's risk in the community – and any subsequent variation to those conditions.
 - c) Making decisions on the re-release of all indeterminate sentence prisoners who have been recalled to prison for breaching their licence conditions – and certain recalled determinate sentence offenders.
 - d) Making recommendations to the Secretary of State on the transfer of indeterminate sentence prisoners from a closed (high or medium security) to an open (low security) prison, and the compassionate release of indeterminate sentence offenders.
4. The legislation provides that the Parole Board may only direct the release of a prisoner if it is satisfied that their detention is no longer necessary for the protection of the public. The Board does not, and cannot, assess whether the sentence handed down by the court was appropriate/adequate and their release decisions are based purely on an assessment of current risk and whether the offender could safely be managed in the community subject to licence conditions. Their decision is not about whether the prisoner should continue to be detained for punishment purposes.
5. The most recent Rules governing Parole Board procedures were made in 2016. They were amended in 2018 following the High Court judgment in the *Worboys* judicial review case which found that the 2016 Rules unlawfully prevented the disclosure of information about Parole Board decisions – contrary to the principles of open justice. The Rules were changed, therefore, from May 2018, to allow the Parole Board to provide decision summaries to victims and others who request one.
6. A review of Parole Board decision making, announced in January 2018 following the decision to release John Worboys, led to two further initiatives aimed at improving transparency, the experience of victims and confidence in the parole system. One was a public consultation about creating a new mechanism to allow for Parole Board decisions to be reconsidered without the need to pursue a judicial review (which ran from April to July 2018). The second was a commitment to review all the Parole Board Rules to identify the scope for further improvements.

7. In February 2019 the Government published its Review of the Parole Board Rules¹ and the response to the public consultation on the reconsideration of parole decisions. The changes to the Parole Board Rules will bring about a number of reforms to improve efficiency and transparency of the parole process. These include:
- The introduction of a reconsideration mechanism that will mean parole decisions which appear to be seriously flawed can be looked at again without the need to pursue a judicial review.
 - The Parole Board will publish Standard Practice guidance documents setting out more transparently the Parole Board's approach to reviewing prisoners for release.
 - Improvements to the Victim Contact Scheme and the way victims involved in the parole process are engaged and communicated with.
 - A new operational protocol between the Parole Board and Her Majesty's Prisons and Probation Service (HMPPS) which will clarify roles and responsibilities within the parole system.
 - Changes to some operational processes and timescales.

B. Policy Rationale and Objectives

Economic Rationale

8. The conventional economic approach to government intervention is based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or there are failures with existing government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to groups in society in more need).
9. The rationale for intervention in this instance is equity: introducing a reconsideration mechanism will create a safeguard whereby parole decisions that may be seriously flawed can be challenged by prisoners and the Secretary of State (as parties to the parole proceedings) without the need to pursue a judicial review through the courts. Victims will have the opportunity to raise concerns with a dedicated team within HMPPS who will examine the case on the victim's behalf and pursue a reconsideration application if there appears to be an arguable case that the threshold for reconsideration may have been met.
10. The other changes to the Parole Board Rules are intended to create a more effective, more open parole process with fewer delays which is of benefit to all parties involved, and to the wider public.

Policy objective

11. The associated policy objective is to reform the current parole system in order to:
- Create a mechanism which will allow release decisions to be challenged and reconsidered by the Parole Board without the need to pursue time-consuming and costly judicial review proceedings;
 - Support a more open and transparent decision making process to improve understanding of and confidence in the parole system;
 - Ensure the issues and concerns about the parole system that were highlighted following the Worboys case have been fully addressed.

C. Affected Stakeholder Groups, Organisations and Sectors

12. The main bodies most affected by the options discussed in this Impact Assessment (IA) are:

¹ <https://www.gov.uk/government/publications/review-of-the-parole-board-rules-and-reconsideration-mechanism>

- The Parole Board for England and Wales as the options relate to the procedural Rules governing how the Board fulfils its statutory functions and the Reconsideration Mechanism requires the Board to provide staff, resources, guidance and training on the new processes.
- HMPPS – principally the Public Protection Casework Section (PPCS) within HMPPS who manage the parole process and require additional staff to deal with reconsideration applications; but also staff working in prisons who provide input to prisoners’ parole reviews.
- The National Probation Service (NPS) – including probation staff (e.g. Offender Managers) who are involved in the parole process and Victim Liaison Officers (VLOs) who provide information and support to victims.
- The Legal Aid Agency (LAA) – Prisoners going through the parole process may be entitled to Legal Aid to pay for legal representation and the additional costs associated with the reconsideration process.
- Prisoners going through the parole process – who will mainly be affected by the new Reconsideration Mechanism 21-day application window during which a Parole Board decision remains provisional and they cannot be released; and who will be able to apply for reconsideration of a non-release decision.
- Victims – who will be able to ask the Secretary of State to apply for release decisions to be reconsidered.
- Prison lawyers – solicitors representing prisoners in the parole process will need to take the changes into account (e.g. may wish to submit reconsideration applications on behalf of the prisoner).

D. Options Under Consideration

13. To meet the policy objectives, two policy options are considered in this Impact Assessment (IA):

- **Option 0/Baseline: Do nothing.** The existing Parole Board Rules would remain unchanged.
- **Option 1: Implement the Parole Board Rules 2019 and Reconsideration Mechanism.** Create the new Reconsideration Mechanism on which the Government consulted in 2018 and make other improvements identified by the Review of the Parole Board Rules.

14. Option 1 is the preferred option as this is the only option that will achieve the policy objective and deliver on the commitments the Government has made in its publications of 4 February 2019.

Option 0

15. Under this option, the only available way to challenge a Parole Board decision would continue to be through judicial review, with the associated costs and complexity of bringing a case before the courts. Without the rule changes, parole decisions would be final and cannot be re-opened. The parole system would continue to operate as before and other improvements identified by the Review of the Parole Board Rules would not be implemented. Some reforms could be delivered through operational changes without new rules but this would be more limited.

Option 1

16. Under this option, the Parole Board Rules will be changed to deliver the commitments and improvements set out in the Government’s Review of the Parole Board Rules published on 4 February 2019. This includes the creation of a Reconsideration Mechanism which provides that eligible decisions will remain provisional for a period of 21 days, allowing time for an application for reconsideration to be submitted before the decision becomes final. This will give the Secretary of State, victims (via the Secretary of State) and prisoners the opportunity to challenge decisions

without having to resort to judicial review. It will allow the Parole Board to re-open and look again at decisions which may be legally flawed.

17. The new Rules will also make changes to further improve the parole process and make it more efficient and effective. For example, by providing that a case is considered to be formally referred to the Parole Board at the point the dossier is submitted by the Secretary of State (whereas under current Rules referral takes place before the dossier is compiled). This change will mean the Parole Board can begin active case management at the point the referral and dossier are submitted – rather than having a period of a few weeks after referral when the Board cannot progress the case while the dossier is awaited.
18. Other improvements include: allowing the Parole Board to directly pursue third party directions and deal with their non-disclosure applications (rather than having to go through HMPPS) which should help improve timeliness and compliance with directions; and, explicit provision for prisoners who lack mental capacity to have representation appointed by the Parole Board to ensure a fair hearing.

E. Cost & Benefits Analysis

19. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
20. This IA identifies the key monetised and non-monetised impacts on individuals, groups and other organisations in England and Wales of implementing the options under consideration. These monetised and non-monetised impacts are compared to the 'Do nothing'/baseline option. As this would involve comparing the 'Do nothing' option to itself, its costs and benefits are necessarily zero as is its Net Present Value (NPV).
21. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
22. It is important to note that the impacts described in this IA are estimates which are based on a number of assumptions and should not be regarded as firm predictions. Due to uncertainty around these assumptions, sensitivity analysis has been carried out to produce lower, medium and upper estimates. For more information relating specifically to these assumptions, please refer to the Risks and Assumptions section (section F).
23. Unless stated otherwise, the impacts in this IA have been calculated on the following basis:
 - All monetised costs and benefits are in 2018/19 prices;
 - 20% Optimism Bias (OB) has been applied to all costs and benefits;
 - Estimates of volumes of cases affected by the new rules are based on the volume and types of parole cases in 2017/18;
 - Unit costs are assumed to remain constant in real terms;
 - Estimates of the costs and benefits are presented as a NPV over a 10-year period from 2019/20, using volumes from 2017/18.
24. It is assumed that the preferred option will be implemented in the second Quarter of 2019/20 (year one) and the modelling takes account of an expected initial interest and surge of reconsideration applications in year one that will reduce to steady state in subsequent years.

Option 1 – Implement the Parole Board Rules 2019 and Create a Reconsideration Mechanism

Volumes of decisions in scope for reconsideration

25. There is an existing power for the Parole Board to revisit some release decisions which has been established through case law. The grounds for a Parole Board to re-open their decision were established in the case of *Robinson* in 1999 and are limited to circumstances where the decision is regarded to be a nullity because:
- The decision was fundamentally flawed (e.g. based on significant incorrect information); or
 - There has been a supervening material change of circumstances (e.g. an essential component of the release plan falls through).
26. The number of cases which fall into this category provides some indication of the volume of decisions that may attract reconsideration for these reasons – but this will not be the full picture in terms of the number of cases that may meet the threshold for reconsideration as the judicial review type criteria go wider than the above grounds for re-referral. In 2017/18, the Parole Board received approximately 30 judicial reviews and there were just over 300 pre-action claims sent to the Parole Board threatening judicial review from prisoners. In relation to challenging decisions to release, there has been only one case brought for judicial review by the victims – and that was the Worboys case in 2018 where the court found the decision to be unlawful and overturned the decision.
27. The reconsideration mechanism is likely to attract a larger number of applications, however, because it will be easier and cheaper to pursue compared to judicial review. Given this will be quite a different approach and process, existing re-referral volumes and judicial review claims do not provide an accurate basis on which to estimate potential volumes of reconsideration cases.
28. Therefore, to estimate the potential impact of this option a top-down modelling approach has been used. This means that rather than taking current re-referral numbers and pre-action letters and scaling them up, data about the total number of eligible cases has been used and scaled down. To do this, assumptions have been made about the proportion of these eligible decisions which may attract a reconsideration application and, of those, the proportion which may be successful and go on to be reconsidered.
29. We estimate that in 2019/20 there will be approximately 3,800 decisions taken by the Parole Board that would be in scope to attract a reconsideration application. This comprises all sentence types where the initial release decision is a matter for the Parole Board (as opposed to sentences which have automatic release in accordance with the legislation with no Parole Board involvement).
30. The decisions in scope, therefore, relate to prisoners serving:
- Indeterminate sentences (Life and Imprisonment for Public Protection (IPP)) where the prisoner may only be released at Parole Board discretion once the minimum term, or ‘tariff’, set by the sentencing court has been completed;
 - Extended Determinate Sentences (EDS) where the Parole Board decides on release between the two-thirds and end points of the custodial term set by the court;
 - ‘Discretionary Conditional Release (DCR)’ sentences – these relate to prisoners who were sentenced when the former release provisions of the Criminal Justice Act 1991 applied and have been preserved for certain prisoners (now in Schedule 20B to the Criminal Justice Act 2003). These are serious violent or sexual offenders (convicted of offences listed in Schedule 15 to the Criminal Justice Act 2003) who are serving sentences of 4 years or more imposed before 3 December 2012 for offences committed before 4 April 2005. Such offenders are subject to discretionary release by the Parole Board between the half-way and two-thirds point in the sentence.

- Sentences for Offenders of Particular Concern (SOPC) – this type of sentence was introduced by the Criminal Justice and Courts Act 2015 for offenders convicted of specified sex offences against children under the age of 13 and certain terrorist offences, where the court decides not to impose a life or EDS sentence. Those sentenced to a SOPC are released at Parole Board discretion between the half-way and end points in their sentence, which then have an additional mandatory 12 months licence period at the end.
 - Extended sentences under former release provisions – This includes Extended Public Protection (EPP) sentences, imposed under a previous release regime but since replaced (in 2015) by the EDS. Under an EPP imposed before 2008, initial release was at Parole Board discretion between the half-way and end points of the custodial term. There are no longer any EPP prisoners awaiting initial release by the Board but there could be cases where an offender still serving an EPP sentence in the community is recalled during the licence period and re-release is being decided by the Board. Similarly, there may be offenders in the community serving a type of extended sentence imposed under the previous regime (governed at the time by the Criminal Justice Act 1991) who could be recalled in the future. Decisions on the re-release of such offenders would be in scope for reconsideration.
31. The power to request the reconsideration of release decisions made in the above cases applies both to the initial release of prisoners serving these types of sentences and to those who have been released on licence and recalled to prison and are being considered for re-release by the Parole Board.
 32. Reconsideration does not apply to prisoners serving standard determinate sentences – i.e. those released automatically at the half-way point in the sentence with no Parole Board involvement – who have subsequently been recalled from licence and are being considered for re-release by the Parole Board. Release decisions in these cases are not eligible to be reconsidered under these provisions.
 33. To estimate the number of reconsideration applications that may be made in respect of the above categories of sentences in scope, an assumption has been made that, where the decision is to release the prisoner, the Secretary of State may submit a reconsideration application in relation to between 1% and 5% of those decisions (3% in the medium scenario).
 34. Of the estimated 3,800 decisions in scope, around 50% – or c1,900 – are release decisions, so applying the above assumptions would give a range of between 19 (1%) and 95 (5%) Secretary of State applications to the Parole Board. A mid-range impact of 3% of release decisions attracting a Secretary of State application would result in around 57 applications a year. For planning purposes we have assumed that 100% of those applications could go on to be reconsidered by the Parole Board (as PPCS will have identified sufficient concern about the decision and put forward evidence of an arguable case). But, in practice, some will be rejected as not meeting the threshold and will not progress to be reconsidered.
 35. Where the decision of the Parole Board is not to release, it is assumed that reconsideration applications will be submitted by prisoners in relation to between 13% and 16% of cases, with a medium estimate of 15%. This is based on the number/proportion of cases in which prisoners currently seek to challenge a decision not to release them. Of the c3,800 decisions in scope for reconsideration, around 50% are non-release decisions – a total of c1,900 cases. Applying the assumption about the proportion of these decisions that would attract an application from prisoners gives a range of between c239 (13%) and c291 (16%) applications a year, with c264 in the medium scenario (15%).
 36. It is assumed that a much smaller proportion of these applications will go on to be reconsidered by the Parole Board (compared to Secretary of State applications) because prisoner applications are less likely to meet the criteria and, based on the current success rate of prisoner challenges to non-release decisions, we estimate between 6% and 13% of applications may result in reconsideration, with a medium estimate of 9%. Taking a mid-range assumption of 15% of non-release decisions attracting a prisoner application (c264 cases) and applying the assumed 9% success rate would mean around 24 prisoner applications a year resulting in the decision being reconsidered by the Board.

37. We have estimated that the number of successful applications for reconsideration, in all cases, could lead to between 27 and 106 additional oral hearings a year.
38. The above estimates and assumptions on the potential numbers of applications for reconsideration and the assumed success rate are summarised in table 1 below.

Table 1: Estimated Number of Decisions in Scope for Reconsideration

Total number of decisions in scope for reconsideration = c3,800 (a year)			
Type of decision	Number of decisions	Proportion / number attracting application	Proportion / number reconsidered (medium scenario)
Release decisions (c50%)	c1,900	1% (low) = 19 3% (med) = 57 5% (high) = 95 (SoS applications)	57 (Assumes 100% of SoS applications reconsidered).
Non-release decisions (c50%)	c1,900	13% (low) = 239 15% (med) = 264 16% (high) = 291 (Prisoner applications)	24 (Assumes 9% of prisoner applications reconsidered).
Total number of decisions reconsidered (medium scenario) = c81 cases (Estimated number of additional oral hearings = 27 – 106.)			

39. It is important to underline that, even where a reconsideration application is successful and the Parole Board decides the case should be reconsidered, that does not mean that a different conclusion to the original decision will be reached. A legally flawed decision (for example, where key evidence was not taken into account) would be re-taken, but the panel re-taking the decision (having had proper regard to all the relevant evidence and making a legally sound decision) may not reach a different assessment as to whether the prisoner is safe to release or not.

Costs of Option 1

Monetised costs

40. Based on the medium scenario, the estimated monetised costs in steady state are c£1.4m pa (£1.1m - £1.9m for lower and upper scenarios). These costs reflect mainly the additional resources required to operate the reconsideration mechanism and can be broken down as follows.

HMPPS

41. The staff costs of the new team in PPCS to deal with victim representations, screening of all eligible Parole Board decisions and putting together Secretary of State applications for reconsideration to submit to the Parole Board are estimated to be around £700k pa.
42. The cost of the additional oral hearings resulting from successful applications for reconsideration is estimated to be in the region of £100k for HMPPS (£50k - £200k for lower and upper scenarios).

Parole Board

43. The implementation costs for Parole Board member training, application form development and a surge in prisoner applications is built into year one costs. These are estimated to cost the Parole Board less than £50k, giving a total cost of c.£200k in year one assuming implementation of the policy in Q2 of 19/20 (£100k - £300k for lower and upper scenarios).

44. The costs of dealing with reconsideration applications – including staff costs in administering the applications and the cost of ‘assessment panels’ (comprising mainly judicial members) to consider and make decisions on applications are estimated to be around £200k pa in steady state (£100k - £300k for lower and upper scenarios).

Legal Aid Agency

45. The impact on legal aid where prisoners who are legally aided submit applications via their legal representative for reconsideration. It is estimated this could draw up to around £400k pa from the legal aid budget (£200k - £600k for lower and upper scenarios).

Non-monetised costs

National Probation Service

46. VLOs will have a key role to play in providing victims with information and support about the reconsideration mechanism. This will form part of the VLO’s role in guiding victims through the parole process and will require additional information about reconsideration to be explained. This may require VLOs to have additional contact – meetings or phone calls – with the victim, particularly in cases where the victim chooses to pursue a request for a decision to be reconsidered.
47. VLOs will be provided with guidance, documentation and advice on how to make sure victims have all the information and support they need about the reconsideration process. Much of this will be standard material that simply need to be shared and explained to victims as part of the ongoing work to guide them through the parole process.
48. For that reason, in the majority of parole cases in which reconsideration is not pursued, this will not add much to the work VLOs are already undertaking with victims and will not require additional resource. In cases where a victim does wish to pursue a request for reconsideration, the impact on the VLO will depend on the extent to which the victim needs the VLO’s input or help in submitting their concerns to PPCS. There may also be further work involved in passing on information and decisions taken – by PPCS and the Parole Board – as the reconsideration process progresses.
49. It is difficult to estimate the additional costs to VLOs since it is dependent on the number of victims that engage with the process. At this stage it is not envisaged that there will be significant additional monetised costs – for example, by requiring the recruitment of additional VLOs to cope with the work involved. An initial model, using upper estimates regarding the number of victim representations, estimates costs of c.£30k for additional VLO staff time per annum; although it is thought that actual costs are likely to be lower. The impact on VLO time and resources will be monitored and kept under review to ensure sufficient resource remains in place.

HMPPS

50. There will be a small impact on prison places due to the additional time that some prisoners may spend in custody as a result of the reconsideration mechanism. As above, the majority of release decisions in cases eligible for reconsideration currently take longer than 21 days to effect the release in practice so there will be no delay to release in those cases. In the minority of cases where there will be a delay this will be, on average, c.7 days. There will also be a small number of prisoners delayed for longer where an application is submitted to the Parole Board to consider, and some of those, where successful, could go on to a further oral hearing. The additional days in custody amount to the equivalent of c.12 additional prison places (at a cost of around c.£18k).

Prison Lawyers

51. Prison lawyers – solicitors representing prisoners in the parole process – will need to take the changes into account (e.g. may wish to submit reconsideration applications on behalf of the prisoner). The time and costs involved in initial familiarisation with the new rules is assumed to be small and have not been monetised. The costs associated with making reconsideration applications will be covered by the Legal Aid Agency costs described above.

Benefits of Option 1

Monetised benefits

52. There are no identifiable monetised benefits arising from the likely impacts of this option.

Non-monetised benefits

Victims, Prisoners and the Secretary of State

53. Victims, prisoners or the Secretary of State will be able to challenge a Parole Board decision they believe may be legally flawed without having to pursue a complex, difficult and costly judicial review. The reconsideration mechanism will allow for decisions to be looked at again by the Parole Board without victims or one of the parties having to argue before the High Court that the Board should be ordered to re-take the decision.
54. It is not possible to quantify the volume of cases which may be diverted from judicial review to the reconsideration mechanism. It is a very different approach for challenging Parole Board decisions and will be much quicker, easier and cheaper to pursue – particularly for victims. It is likely, therefore, that victims who would not previously have contemplated pursuing a judicial review will wish to request reconsideration – so it will generate cases that would not otherwise attract a JR.
55. The same applies to prisoner applications. Whilst prisoners who receive a non-release decision may be more likely than victims to seek a JR – and the estimates in this IA take account of the number of challenges brought by prisoners – prisoners may be more inclined to apply for reconsideration than may previously have sought a JR. There will be some cases where a prisoner may have pursued a JR which will be dealt with instead by the reconsideration mechanism – and there will be savings associated with that as the costs of JR would no longer be incurred. It is not possible, however, to quantify the relative costs and savings – data on the unit cost of a JR is not available and will vary considerably from case to case. Nor is it possible to quantify the volume of cases that may be diverted from JR to reconsideration. For these reasons, this benefit has not been monetised.
56. It is important to underline that the purpose of the reconsideration mechanism is not to achieve cost savings by diverting cases from JR. Its benefit derives more from the additional confidence it brings to Parole Board decision making – particularly for victims – because it provides reassurance that decisions will be routinely checked for potential flaws and that there is a clear and straight-forward method for raising concerns about a decision and asking for it to be reconsidered.

The Parole Board

57. The greater transparency introduced to the parole system by the wider reforms – together with the improvements to the way victims are engaged and communicated with and increased efficiency and effectiveness in the process – will all contribute to increased awareness of, and confidence in, parole decision making.

F. Risks & Assumptions

58. The estimated cost and benefit impacts presented in this IA are based on a range of assumptions, some of which are inherently uncertain. Consequently, each of the impacts in this IA are subject to a degree of risk. The assumptions and the associated risks are described in table 2 below.

Table 2: Risks and Assumptions

Assumption	Associated Risk
Data on the number of Parole Board decisions which may be eligible for reconsideration (c.3,800) has been based on an internal stock flow model and historical volumes of oral hearings eligible for reconsideration to produce	There is a risk that the actual volumes will deviate from the figures used in the above modelling as the type and number of cases the Parole Board deals with shifts over time. That could affect the numbers of applications and therefore the estimated costs.

<p>a projection of eligible Parole Board decisions.</p>	
<p>It is assumed that between 1% and 5% of eligible release decisions (c1,900) will attract a Secretary of State application for reconsideration, with a medium estimate of 3% – a range of between 19 and 95 applications a year.</p>	<p>There is no data or existing processes on which to base an assumption about the potential number of applications. It is assumed to be a very small proportion of eligible cases (1%-5%) because the threshold (JR-type grounds) is high and there is no reason to suppose the vast majority of parole decisions are not legally sound. On that basis, the assumption and estimated number of applications is likely to be an over-estimate but there is a risk that the figures could be under estimations.</p>
<p>It is assumed that 100% of Secretary of State applications will meet the threshold and be reconsidered by the Parole Board.</p>	<p>This is likely to be an over estimation as some Secretary of State applications will be rejected and the case will not be reconsidered. However, for planning purposes, and to provide an upper estimate of potential numbers going through the process, it is assumed that all cases where the SoS has assessed there to be an arguable case and put in an application will be accepted by the Parole Board.</p>
<p>It is assumed that between 13% and 16% of eligible non-release decisions (c1,900) may attract prisoner applications, with a medium estimate of 15% – a range of between 239 and 291 applications a year.</p>	<p>The assumed higher proportion (compared to Secretary of State applications) of non-release decisions that may attract prisoner applications takes account of the proportion of such decisions that currently attract a challenge; and an assumption that prisoners are more likely than victims/ the SoS to seek reconsideration where release has been denied. There is risk that the proportion/number of prisoner applications will exceed these estimates.</p>
<p>It is assumed that between 6% and 13% of prisoner applications will be successful and go on to be reconsidered, with a central estimate of 9%.</p>	<p>This assumption is based on the current proportion of JRs pursued by prisoners against the Parole Board which are successful. It is a useful indication, therefore, but the reasons for those challenges and the outcomes will be different to reconsideration cases which is a new and different system. It is possible, therefore, that the proportion of reconsideration applications that are successful could be higher or lower than this.</p>
<p>It is assumed that in c19% of eligible release decisions (c370 cases) it takes less than 21 days to effect the prisoner's release in practice – and, in those cases, the average period until release is currently about 14 days (so, the 21-day application window will delay release in those cases by an average of c7 days). Where PPCS submits an application to the Parole Board there will be further delays, however these apply only to the small number of cases that proceed this far (based on the assumptions above).</p>	<p>This assumption is based on information about the length of time it currently takes in reconsideration eligible cases between a release decision being taken by the Board and the prisoner's release, once all the practical arrangements have been put in place (e.g. a bed at an Approved Premises). Based on that, there should be a relatively small proportion (c19%) of cases where there may a short delay to release created by the application window – with those prisoners being released on average after 21 days instead of after 14 days. There is a risk that the number of prisoners affected and by how long could be different to these estimates.</p>

<p>Staff costs for PPCS and Parole Board are for employing additional staff and not for redistributing existing staff. HMPPS costs are calculated on cost per hour and will not require the employment of new HMPPS staff (as HMPPS staff costs are for oral hearings only and only a small number of cases distributed nationwide will make it this far in the reconsideration process).</p>	<p>The additional staff costs are based on estimates of the time taken at each stage of the process and the projected caseload according to the assumptions above. The figures used in the modelling could be an under or over estimate.</p>
<p>Internal assumptions have been used to generate HMPPS case preparation times. These are based on the case preparation times of an oral hearing. It has also been assumed that no seconded offender managers will act as offender supervisors for the case preparation.</p>	<p>It is possible that these predictions and their related costs will differ in relation to reconsidered hearings. It is difficult to predict the direction of this change. The figures used in the above modelling may be over or under estimations. Seconded offender managers can in some cases perform the case preparation duties of an offender supervisor. This requires more time on average at a higher salary band. Therefore, the above figures may be underestimating the total cost to HMPPS from reconsideration.</p>
<p>It is assumed that all hearings will require some form of Legal Aid due to their expected complexity and that this cost is higher than the average Legal Aid cost for a standard oral hearing for similar reasons.</p>	<p>This is an upper limit of the proportion of cases requiring legal aid, however there is a risk that the associated costs could be higher than estimated depending on the complexity of the case.</p>

G. Wider Impacts

Equalities Impact

59. The Parole Board Rules apply equally to all those going through the parole process so there is no assessed direct discrimination within the meaning of the Equalities Act 2010. There may be indirect discrimination arising from the characteristics of prisoners generally, and those being considered for parole in particular, compared to the general population. But generally speaking, the changes should improve the parole system for both prisoners and victims – mainly through greater transparency and efficiency; and the reconsideration mechanism will allow prisoners and victims to challenge decisions without having to pursue a judicial review. Therefore, even if people with protected characteristics are over-represented in those affected groups, the impact should mostly be positive.
60. Even if some elements of the reforms could be shown to place groups with protected characteristics at a disadvantage – and there is limited evidence to substantiate that risk – we believe it is a proportionate approach to achieve the legitimate aims of these reforms as detailed above. Broadly, we believe the principles of open justice and public interest and confidence in the system necessitate the changes – and that they are appropriately balanced against consideration of, and protections for, individual privacy, personal risk and rehabilitation.

Ensuring equality of treatment

61. There are some provisions designed to ensure equality of treatment. For example, a new provision for an explicit power in relation to prisoners with mental health needs or learning difficulties who may lack the capacity to understand or engage with the parole process or to appoint their own representatives. This recognises that such prisoners require adjustments and support to ensure that they receive a fair hearing regarding their ongoing detention. The Rules will provide that the Board

may appoint a representative (legal or otherwise) who will act in the best interests of a prisoner who lacks mental capacity.

62. This is in addition to the power for the parole panel to make directions which also take account of the particular needs and characteristics of the prisoner and others involved in the process (including any reasonable adjustments that may be needed) to ensure a fair and lawful process.

Data sources to inform equalities assessment

63. Data on protected characteristics for those involved in the parole process is limited. General information about offenders and victims is available from data published by the Office of National Statistics. This includes the Ministry of Justice's latest *Offender Management statistics quarterly, England and Wales*², the most recent *Crime in England and Wales report*³ and data from the 2011 census⁴.
64. There is no published data, however, about protected characteristics for prisoners serving sentences which involve release by the Parole Board with the exception of their gender. While some information is available on prisoners' gender reassignment, it is not available for the general population. Data is unavailable with respect to victims' gender reassignment and pregnancy and maternity. Likewise, data is unavailable with respect to Parole Board members' protected characteristics, with the exception of gender, disability and race.

Affected groups

65. The changes will have a direct impact on both victims of crime and offenders. Direct data on victims of crime where the offender who committed a crime against them goes through the parole process is unavailable. Data is available, however, on the characteristics associated with being a victim of homicide or of a violent or sexual crime. Relative to the general population, victims of homicide are more likely to be male.⁵ Victims of almost all types of sexual assault are far more likely to be female.⁶ Victims of almost all types of domestic violence are also far more likely to be female.⁷ Victims of almost all other violent crime are more likely to be male, aged between 16 and 24, or single.⁸
66. Prisoners with certain protected characteristics are overrepresented in the prison population when compared to the general population and therefore more likely than other groups to be affected by the reform measures. Relative to the general population, prisoners are more likely to be male, aged between 18 and 39, have a disability, have a Black or Black British ethnicity, be from a mixed ethnic group, or be Muslim.⁹ Furthermore, it is likely that those identified as Gay, Lesbian, Bisexual or Other (LGB) are overrepresented in the prison population when compared to the general population.¹⁰

² *Offender Management statistics quarterly: October to December 2018*, accessed at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2018>

³ *Crime in England and Wales: year ending June 2018*, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2018>

⁴ *Census 2011*, accessed at <https://www.ons.gov.uk/census/2011census>

⁵ See *Homicide in England and Wales: year ending March 2018*, §4, <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2018>

⁶ See *Sexual offences in England and Wales: year ending March 2017*, § 6, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

⁷ See *Domestic abuse: findings from the Crime Survey for England and Wales: year ending March 2018*, §5, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusefindingsfromthecrimesurveyforenglandandwales/yearendingmarch2018>

⁸ See *The nature of violent crime in England and Wales: year ending March 2018*, §8, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/thenatureofviolentcrimeinenglandandwales/yearendingmarch2018>

⁹ See *Prison Population 31 March 2019: Offender Management statistics quarterly: October to December 2018*, accessed at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2018>. For those serving a life sentence or a sentence of imprisonment for public protection, males are slightly overrepresented with respect to the total prison population (96.5% of life and IPP prisoners as opposed to 95.44% of the total prison population, see *ibid.* tables 1.1 and 1.9a.) This slight overrepresentation is consistent with statistics from previous quarters. Information about other protected characteristics is not available for this subset of prisoners.

¹⁰ 2.6% of prisoners identified as LGB. This is likely to be under-reported. Sexual orientation was not collected in the 2011 census. The most recent Experimental Official Statistics identified 2% of the general population as LGB. It is therefore likely that those who identify as LGB are overrepresented with respect to the general population. See *National Offender Management Service Annual Offender Equalities Report, 2016/17, 12*, accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663390/noms-offender-equalities-annual-report-2016-2017.pdf and *Sexual Identity: UK, 2016*, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualidentityuk/2016>

67. By virtue of their overrepresentation, we acknowledge that any positive impacts arising from the introduction of a reconsideration mechanism will benefit those groups of victims and prisoners listed above relative to the general population. Similarly, any adverse effects associated with the legislation will disadvantage those groups listed above relative to the general population.
68. Our consideration of equalities includes ensuring that our policies are developed and implemented in line with MoJ and HMPPS Welsh Language Schemes. Additionally, changes involving the publication of information about Parole Board practices on GOV.UK will, under the rules governing the GOV.UK website, take into account disability, numeracy and literacy issues, and communication and learning difficulties.

Positive impacts on people with protected characteristics

69. It is expected that the reconsideration mechanism will benefit victims by improving their access to justice and giving them extra assurance that there is a mechanism in place to more easily reconsider Parole Board decisions. This, therefore, provides victims with quicker, easier and cheaper access to justice – and a level of support in pursuing a challenge that was not previously available for those without the means to launch a judicial review.
70. There may, therefore, be a positive impact on victims of serious sex offences, and, as outlined above, women are far more likely to be the victim of a sexual crime¹¹.
71. The introduction of a reconsideration mechanism for Parole Board decisions is also expected to improve offenders' access to justice as part of a more just and transparent process. Prisoners will now have an easier route to challenging decisions they believe to be legally flawed than pursuing a judicial review.

Potential negative impacts

72. There is a risk that some offenders may be held in prison for longer periods of time than at present to allow the opportunity for a release decision to be reconsidered. This risk is to be mitigated by placing limits on the timeframe in which a reconsideration application may be made (21 days). This will be comparable to current timescales for making the practical arrangements for release following a successful oral hearing for the majority of prisoners eligible for reconsideration (around 80% of whom take longer than 21 days to release) – thereby avoiding a delay to release in practice. However, we do expect that a small number of prisoners could be detained for a short period of time (c.7 days on average) beyond the current norm.
73. With respect to the outcome of Parole Board hearings, there is some evidence that offenders who are white are more likely to be approved for release than those from any other ethnic background. This is the case for both initial release decisions and release following recall¹². It is possible, therefore, that similar outcomes could apply to the small number of cases that are to be reconsidered. This is in the context that those from non-white ethnic groups are overrepresented in the prison population generally. Therefore, any positive impact of the reconsideration mechanism is to their advantage. However, in terms of decisions taken following a further hearing, non-white offenders may be proportionately less advantaged than their white counterparts.

¹¹ See *Sexual offences in England and Wales: year ending March 2017*, § 6, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

¹² For review cases in 2016, 43% of White offenders were released from prison while for other ethnic groups percentages ranged from 36% to 39%. For recall hearings, 59% of White offenders were released from prison, while for other ethnic groups percentages ranged from 49% to 58%. See *Statistics on Race and the Criminal Justice System 2016: A Ministry of Justice Publication under Section 95 of the Criminal Justice Act 1991*, 85-86, accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669094/statistics_on_race_and_the_criminal_justice_system_2016_v2.pdf In November 2017, the Parole Board published data for hearing results by ethnicity for the first time for year ending March 2017. These data were reliant on the Public Protection Unit Database (PPUD) and therefore there was the potential that either ethnicity or outcomes could be recorded incorrectly. The data showed that White offenders were more likely to be approved for release than non-White offenders. White offenders' release rate was 49.5% while for other ethnic groups percentages ranged from 40.2% (Asian) to 48.4% (Mixed). Black offenders had a release rate of 43.7%. See *The Parole Board for England and Wales, Annual Reports and Accounts 2017/18*, 33, accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727619/Parole_Board_Annual_Report_Accounts_2017-18.pdf

74. To mitigate this risk, we support all measures the Parole Board is taking to address the potential for racial bias in parole decision making. This work is being led by the Parole Board's equality and diversity advisory group. A recent recruitment campaign has targeted specifically increasing the diversity of Parole Board membership. The Parole Board's most recent annual reports and accounts have published data for hearing results by ethnicity for the first time.

Better Regulation

75. These proposals do not meet the definition of regulation under the Small Business Enterprise and Employment Act 2015. The costs will not score against the department's business impact target.

H. Implementation

76. The Parole Board Rules 2019 laid on 27 June 2019 come into force on 22 July 2019. The reconsideration mechanism will apply in respect of eligible decisions issued by the Parole Board on or after the date the Rules come into force.

I. Monitoring & Evaluation

77. Data and management information will be collected to monitor the actual impact and costs associated with the implementation of the Parole Board Rules 2019 – and the new reconsideration mechanism in particular.

78. Numbers and types of applications, the outcomes and impacts will be monitored – to allow the operation of the mechanism to be evaluated and reviewed. This will include obtaining feedback and views from those involved in the new process – including victims and prisoners – to gauge the impact it is having and whether it is working as intended. Changes or adjustments will be made to the scheme if that is assessed to be necessary to improve its effectiveness or to rectify any deficiencies or drawbacks with its implementation.

79. More broadly, performance data and other measures of success with the other changes and reforms introduced by the Parole Board Rules 2019 will be collected to allow an assessment to be made of whether the reforms have achieved the intended impact of improving transparency, efficiency and effectiveness of the parole process.

80. An informal Rules Committee will be established – including representation from external stakeholders and victim and prisoner representatives – to keep the Parole Board Rules under review. The Committee will recommend where future changes may be required to keep pace with wider developments in the system, or in response to any issues where changes to the Rules could deliver further benefits.