

EXPLANATORY MEMORANDUM TO
THE PAROLE BOARD RULES 2016

2016 No. 1041

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This statutory instrument contains procedural rules for the Parole Board for England and Wales ('the Parole Board'). The rules apply when a prisoner's case is referred to the Parole Board by the Secretary of State for Justice.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In the Thirty-Ninth Report of session 2010-12, the Joint Committee on Statutory Instruments drew the special attention of both Houses to the Parole Board Rules 2011 (SI 2011/2947) on the ground that they were defectively drafted in three respects. Firstly, that the reference to 'judge' in Rule 5(4) was imprecise. The reference to 'judge' was removed by the Parole Board (Amendment) Rules 2014 (SI 2014/240) and has not been replicated in this instrument. Secondly, the Committee asked the Ministry of Justice to explain the relationship between two propositions contained in Rule 8: Rule 8(1) which allowed the Secretary of State to withhold "any information or report from the prisoner and their representative" on various specified grounds; and Rule 8(3) provided that, if the Secretary of State has withheld information from the prisoner, it must be served on the prisoner's representative. At the time, the Ministry of Justice explained that the intention was that the Secretary of State should be able to withhold information and reports either from the prisoner (but disclose them to the prisoner's representative), or from the prisoner and the prisoner's representative, subject to any direction otherwise in accordance with Rule 8(3). This is now reflected in Rule 8 of the Parole Board Rules 2016. Thirdly, the Committee was concerned about the reference, in a number of places in the Schedules to the Parole Board Rules 2011, to 'the index offence'. This term has now been defined in Schedule 1.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The instrument replaces the Parole Board Rules 2011 (SI 2011/2947). These rules were amended by the Parole Board (Amendment) Rules 2014 (SI 2014/240).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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 Parole Board is an independent body that assesses whether prisoners can be safely released into the community. Where a prisoner's rights under article 5 of the European Convention of Human Rights (right to liberty and security) are engaged the Parole Board recognises the need for prisoners and their representatives to be afforded a clear and transparent process about how these rights can be protected.
- 7.2 This instrument has been informed by the Parole Board's response to the Supreme Court Judgment in *Osborn, Booth and Reilly* ([2013] UKSC 61) which widened the circumstances in which a prisoner could request an oral hearing resulting in a significant increase in the number of oral hearings. Cases outstanding increased from 1245 (September 2013) to 3163 (January 2015), with increased compensation costs arising from delays.
- 7.3 In response, the Parole Board implemented, in April 2015, a major change programme with a new operating model (Member Case Assessment (MCA)) in order to deliver oral hearings in a more efficient manner. A key feature of the MCA process is a new triage system by which members assess cases. This has resulted in performance improvements including an increased number of cases listed each month. Consequently, the backlog of cases has fallen to 2093 in September 2016.
- 7.4 This Instrument revises the Parole Board Rules 2011 to align more closely with current Parole Board operational processes and permits the Parole Board to direct the release of prisoners serving a sentence of imprisonment for public protection (IPP) without a hearing.
- 7.5 Rule 1 (citation, commencement and revocation) provides that the rules will come into force on 22 November 2016. The Parole Board Rules 2011 (SI 2011/2947) and the Parole Board (Amendment) Rules 2014 (SI 2014/240) will be revoked.
- 7.6 Rule 2 (interpretation) includes some new definitions and amends some existing definitions: for example, "duty member" has been included, to reflect current operational processes; "IPP sentence" is included, and relates to rules specifically addressed to prisoners serving a sentence of imprisonment for public protection; the Chair of the Board is now the "Board chair", rather than "Chairman", and the Chair of an oral panel is the "Panel chair", to ensure clarity. In general throughout the Rules, the language has been updated to reflect current drafting practice; for example "shall" has become "must". The effect of Rule 3 (application) is that the Rules apply to all cases referred to the Board (including cases already referred to the Board before the date on which the rules came into force).

- 7.7 Rule 4 (referral of cases) now reflects current operational processes so that all cases are deemed to be referred to the Parole Board on the date the Parole Board receives the initial referral letter from the Secretary of State.
- 7.8 Rule 5 (appointment of panels) reflects the new MCA case management system in which all cases are initially assessed by a single member on the papers (MCA stage). Following this stage, if a case is referred to an oral hearing, an oral panel must be constituted by the Parole Board. Rule 5(3) has been amended to indicate that where an oral panel is constituted of only one member, that member is the panel chair. Rule 5 allows for the same member appointed to consider a case on the papers to sit on an oral panel for the same case.
- 7.9 Rule 6 (representation) now provides that a party may be represented by any person appointed on behalf of the party, in addition to appointment by the party.
- 7.10 Under Rule 7 (service of information and reports), the Secretary of State must serve the information as set out in this Rule on the Board and the prisoner's representative (if a representative is appointed). The representative may disclose the information and reports to the prisoner. Where the prisoner is not represented, the Secretary of State must serve the information or reports on the Board and the prisoner.
- 7.11 Rule 8 sets out more comprehensively the process by which the Secretary of State may withhold information or reports. The Secretary of State may apply to the Board for information to be withheld from the prisoner, or both the prisoner and their representative. Under Rule 8 (rather than previously under Rule 10), the Board member considering the application may make any direction as necessary to enable determination of the application, and must determine the application by way of a direction. The right to appeal a direction relating to whether any information or report should be withheld, and the process relating to appeals (by either the prisoner or the Secretary of State) against such a direction is now contained in Rule 8, rather than Rule 10.
- 7.12 To allow applications to be dealt with at an earlier stage, Rule 8 allows that, in addition to panel chairs, single members (at the paper stage) and duty members can consider applications to withhold information or reports where appointed by the Board to do so.
- 7.13 Rule 8(7) provides that a representative must give an undertaking where any material is disclosed to the representative, following a direction by the member that material should be withheld from the prisoner, or disclosed to the prisoner in the form of a summary or redacted version.
- 7.14 Rule 8(10) states that the Secretary of State may withdraw the material following a decision that it be disclosed to the prisoner in full or in the form of a summary or redacted version. This applies following a direction by a member of the Board, *or* following an appeal against a direction. If the Secretary of State decides to withdraw any material, it must be done within 7 days of the decision.
- 7.15 Rule 9 (representations by and evidence of the parties) now enables both parties i.e. the prisoner and the Secretary of State, to make representations to the Board, rather than the prisoner only. Late submission of evidence by any party will only be accepted at the discretion of the chair and reasons must be given by that party for the late submission. This is intended to encourage parties to submit evidence on time.

- 7.16 Rule 10 (directions) states that directions may be given, varied or revoked at any time by either the panel chair, single member or duty member appointed for that purpose at any time operational guidelines will continue to govern which member deals with an application at a particular stage.
- 7.17 Rule 11 allows a panel chair or single member to hold a directions hearing if necessary, although this is expected to be rare.
- 7.18 Rule 12 (adjournment and deferral) allows a single member or duty member, in addition to a chair, to adjourn or defer proceedings, to align with current operational processes and afford greater flexibility. Rule 12(3) requires that decisions to adjourn or defer a hearing must be recorded in writing with reasons and provided to the parties within 14 days. These requirements are consistent with the current requirements for decisions following oral hearings.
- 7.19 Rule 13 (time) allows a single member or duty member, in addition to a chair, to change any period of time where that member considers that it is appropriate to do so.
- 7.20 Rule 14 reflects the Parole Board's new MCA process under which all cases are first assessed by a single member. It sets out the process by which all referrals are considered, including advice cases.
- 7.21 Rule 14 makes specific provision to allow IPP prisoners to be released without an oral hearing. This is not currently provided for under the Parole Board Rules 2011. Therefore, in cases where release on the papers is appropriate, these prisoners can be released at an earlier stage and will not need to proceed to an oral hearing. This change is expected to be most suitable for IPP prisoners recalled on technical breaches of their licence.
- 7.22 Rule 14 provides that a prisoner serving an indeterminate sentence other than an IPP sentence, may not be released on the papers on initial release; the single member must decide that the prisoner is unsuitable for release, or that the case should be directed to an oral panel.
- 7.23 Rule 14 makes provision for a single member, appointed under Rule 5(1), to make a decision on the papers. This Rule provides that a single member considering the release of a recalled prisoner serving an indeterminate sentence (other than an IPP sentence) must direct the case to an oral hearing. This is the case unless the prisoner expressly notifies the Board that they do not wish to have a hearing under Rule 19.
- 7.24 In any other case, which includes consideration of the initial release of a prisoner serving an IPP sentence and recall following release of a prisoner serving an IPP sentence, a decision must be made that either the prisoner is suitable for release on the papers, unsuitable for release, or that the case should be directed to an oral panel.
- 7.25 Under Rule 14(5), if a single member appointed under Rule 5(1) decides that the case should be directed to an oral panel, they may make directions at the same time relating to the hearing before an oral panel.
- 7.26 Rule 15 (provisional decision against release) makes provision for a prisoner to apply in writing for an oral panel to determine his or her case, where a decision has been made on the papers that the prisoner is unsuitable for release. A duty member must consider such an application, and that duty member cannot be the same person who made the provisional decision under Rule 14. Rules 16 (consideration by oral panel),

17 (oral panel decisions) and 18 (notice of hearing) provide clarity as to the process for oral hearing.

- 7.27 Rule 19 (notification by prisoner) reverses the requirement for a prisoner to notify the Parole Board and the Secretary of State of their wish not to attend their hearing. This is because in the majority of cases, prisoners do wish to attend their hearings. They now need to notify the Board and Secretary of State if they do not want an oral panel to consider their case, or they do not want to attend a hearing. The hearing can still take place in the absence of the prisoner.
- 7.28 Rules 20 (witness), 21 (observer) and 22 (location and privacy of proceedings) align with current processes and give greater flexibility as to who decides applications regarding witnesses and observers and makes directions regarding the location of proceedings. This enables directions to be made at an earlier stage where appropriate. Operational processes will continue to govern who deals with such applications depending on when they are received.
- 7.29 Rule 23(1)(b) (hearing procedure) includes a reference to transfer to open conditions for completeness, as this will be the relevant issue from time to time.
- 7.30 The requirement that oral panel decisions be signed by the chair has been removed from Rule 24 (the decision) to align with current operational processes.
- 7.31 Rule 25 (disclosure of information) provides that information about proceedings under these Rules, and the names of persons concerned in the proceedings must not be made public. It provides a sanction for breach of this requirement.

Consolidation

- 7.32 None.

8. Consultation outcome

- 8.1 There is no statutory obligation to consult on the Parole Board Rules. While no formal consultation was undertaken in respect of these rules, the Parole Board has consulted a select group of members on the major changes. All those consulted are content with the proposed changes to the Parole Board Rules.

9. Guidance

- 9.1 The Parole Board publishes an Oral Hearings Guide. This is designed to provide detailed guidance to Parole Board members on the procedures and practicalities of conducting oral hearings, covering issues members may encounter in advance of the hearing and on the day and dealing with the procedure and substance of issuing directions, making decisions and drafting written reasons. This will be updated following the making of this instrument.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is a more efficient parole system where the Parole Board continues to ensure public protection while delivering an increased number of parole hearings.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 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 is discussed. These meetings are an appropriate forum at which the effectiveness of this instrument can be discussed.

13. Contact

- 13.1 Ed Bowie, Arm's Length Bodies Division, Ministry of Justice. Tel: 020 3334 4018 or email: ed.bowie@justice.gsi.gov.uk, can answer any queries regarding the instrument.