

EXPLANATORY MEMORANDUM TO
THE PAROLE BOARD (AMENDMENT) RULES 2018

2018 No. 541

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 The purpose of this instrument is to substitute the current Rule 25 of the Parole Board Rules 2016 (“the 2016 Rules”) with a new Rule. The amendment sets out the conditions under which information relating to hearings of the Parole Board of England and Wales can be disclosed. It provides the circumstances in which victims and other persons can receive summaries of the reasons for decisions made by the Parole Board either on consideration of the papers by a single-member or after an oral hearing.

3. Matters of Special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 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 As currently drafted, Rule 25 (1) of the 2016 Rules sets out a blanket prohibition on the disclosure of any information relating to Parole Board hearings. Contravention of this prohibition is actionable as a breach of statutory duty, as per Rule 25 (2) of the 2016 Rules.
- 4.2 Rule 25 of the 2016 Rules was found to be unlawful by the High Court in *R. ex parte DSD and NBV and others v The Parole Board of England and Wales and others*¹. The Secretary of State for Justice made a parliamentary statement on John Worboys and the Parole Board on 28th March 2018². In that statement he set out that he was considering how Rule 25 should be reformulated. Furthermore, he declared an intention to conduct a further Review into the Parole Board Rules in their entirety.
- 4.3 Section 239 (5) of the Criminal Justice Act 2003³ provides that the Secretary of State may make Rules with respect to the proceedings of the Board.

¹ [2018] EWHC 691 (Admin)

² House of Commons Hansard 28 March 2018, vol 638, col 776-778

³ 2003 c. 44. There are no amendments to this paragraph

4.4 This instrument prescribes the circumstances under which information pertaining to Parole Board hearings can be disclosed.

5. Territorial Extent and Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in section 3 under “Other matters of interest to the House of Commons”.

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 This Order is an initial and urgent step to remove the blanket ban on disclosure of information and allow the Parole Board to make available summaries of their reasons for decisions to release or not release an offender to victims. However, we will be reviewing the Parole Board Rules in their entirety. Further transparency will be considered as part of this Review, as well as the consultation on a reconsideration mechanism.

7.2 Under the amended Rule, where the Parole Board consider the release of a prisoner under Rule 14(7) or Rule 24, they must produce a summary of the reasons for the decision if they are notified by the Secretary of State, in practice through Her Majesty’s Prison and Probation Service, that a victim (as defined in the Rule as inserted) wishes to receive a summary. It is only where the Board Chair considers that there are exceptional circumstances against the disclosure, that the summary will not be disclosed.

7.3 Where any other person wishes to receive a summary of the reasons for a decision under Rule 14(7) or 24, the Board must produce and disclose a summary where the Board chair considers that disclosure is justified in the interests of open justice.

7.4 The Board chair holds a further discretion to direct disclosure of information outside of the summaries of reasons for decisions to victims and other persons. However, the names of persons concerned with the proceedings, other than the parties, cannot be disclosed under the amended Rule. This is in response to concerns raised during our stakeholder engagement about safety and tenure of panel members; to protect the candour and safety of witnesses; and to protect the privacy of victims.

7.5 The amended Rule will ensure that victims and the public are better able to access and understand the reasons behind Parole Board decisions.

7.6 To support this approach, today we have also published a full package of measures alongside laying this Order, following on from the Secretary of State’s oral statement to address the immediate and wider issues.

7.7 This will cover the full findings of the Review into transparency, victim communications and reconsideration of Parole Board decisions; the launch of a consultation on the detail of a new mechanism to review Parole Board decisions,

including consideration of how these proceedings can be as transparent as possible; and details of the wider Review of the full Parole Board Rules.

- 7.8 Work is also ongoing in other areas, including implementing changes to how victims engage with the parole process. The changes to increase transparency are a key part of this ongoing work and will be reflected as part of a wider package.
- 7.9 This policy aims to increase public engagement with, and understanding of, the criminal justice system (CJS) by ensuring the Parole Board of England and Wales is transparent with victims of crime as to the reasons behind their decisions, and provides them with the discretion to disclose this information to the media and the public. The rationale behind greater transparency of Parole Board decisions is that this should help in raising public confidence in this aspect of the CJS which may lead to greater benefits to society.
- 7.10 There is evidence from the Crime Survey for England and Wales (2013/14) that public confidence in the CJS is low. Fewer than half of those surveyed (48%) said that they were very or fairly confident that the CJS as a whole was effective⁴.
- 7.11 There are a number of direct reasons for improving public confidence in the Criminal Justice System. Firstly, research suggests that victims and witnesses who are satisfied with their contact with the CJS are more likely to be willing to engage with the CJS again in future⁵. Secondly, trust in the justice system has been found to improve people's willingness to cooperate with legal authorities⁶.
- 7.12 There has been high media and Parliamentary interest in this area. The decision of the Parole Board to release John Worboys was subject to intense and sustained scrutiny beginning in January this year⁷. The story sparked a response from a number of stakeholders, including charities and support groups. The Secretary of State for Justice announced a Review into the transparency of the parole system and victims' involvement in the process on 9 January 2018⁸. The findings of this Review have been published today.
- 7.13 Two of the victims of John Worboys, the Mayor of London and two media outlets launched judicial reviews against Worboys' release. The hearing took place on 13 and 14 March, and the judgment was released on 28 March 2018. In relation to transparency, the Court found that the current iteration of Rule 25 of the Parole Board Rules 2016 was unlawful due to the blanket prohibition on releasing information about parole hearings being in contravention of the principle of open justice. This Order brings forward changes to give effect to that judgment.

8. Consultation outcome

- 8.1 Whilst a formal consultation has not been carried out on Rule 25, we have engaged with a range of stakeholders with a direct interest in these proposals.

⁴ Ministry of Justice (2015) *Public confidence in the Criminal Justice System – findings from the Crime Survey for England and Wales (2013/14)*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/449444/public-confidence.pdf

⁵ Franklyn, Ministry of Justice (2012) *Satisfaction and willingness to engage with the Criminal Justice System. Findings from the Witness and Victims Experience Survey, 2009-10*, <https://www.gov.uk/government/publications/satisfaction-and-willingness-to-engage-with-the-criminal-justice-system>

⁶ Hough et al (2013) *Attitudes to sentencing and trust in justice*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203008/Attitudes_to_Sentencing_and_Trust_in_Justice__web_.pdf

⁷ <http://www.bbc.co.uk/news/uk-england-london-42571219>

⁸ <https://www.gov.uk/government/speeches/transparency-of-the-parole-board-and-victim-support>

- 8.2 Specifically, interviews and focus groups were completed with:
- Victims, including those engaged with the Victims' Contact Scheme
 - practitioners who work within the Parole system – prison offender managers; victim liaison officers; prison psychologists.
 - Parole Board members.
 - The former Chair of the Parole Board, Professor Nick Hardwick; the Chief Executive of the Parole Board, Martin Jones; and other Parole Board staff
 - A Secretary of State representative
 - The Victims' Commissioner for London, Claire Waxman
 - The Chief Inspector of Probation, Dame Glenys Stacey, and Assistant Chief Inspector of Probation, Sally Lester.
 - Chair of the APCC's Victims Portfolio Group and PCC for Northumbria, Dame Vera Baird.
 - Staff from the Ministry of Justice and Her Majesty's Prisons and Probation Service working on the Victims' Contact Service and in the Public Protection Casework Section.
 - Offenders and the Association of Prison Lawyers.
- 8.3 We received representations from the Parole Board; Justice Select Committee; and Prison Reform Trust. An online questionnaire, aimed at victims of crime who had engaged with the Victims' Contact Service was also completed.
- 8.4 The Review sought out examples of best practice from other jurisdictions; conducting interviews with eight English speaking jurisdictions (Canada, New Zealand, New South Wales (Australia); Queensland (Australia); Western Australia (Australia); Scotland; Northern Ireland; and Republic of Ireland) and receiving written submissions from 4 European jurisdictions (Denmark; Norway; Germany and Malta).
- 8.5 There was general support for disclosing more information about the reasons for Parole Board decisions – especially to victims. Whilst there was a general lack of transparency over Parole Board decisions in the other European jurisdictions to which we spoke, other Commonwealth jurisdictions (Canada, Australia and New Zealand) took a different view and most disclosed at least a summary of the reasons for their decisions. There was general consensus that protecting the privacy of victims and rehabilitative rights of the offender should be paramount. Most parties raised concerns about disclosing the identities of members of the parole panel and those giving evidence at the hearing. A summary of the findings of our engagement has been annexed to the Review into transparency, victim communications and reconsideration of Parole Board decisions and can be found at:
<https://www.gov.uk/government/publications/review-of-the-law-policy-and-procedure-relating-to-parole-board-decisions>.
- 8.6 We will continue to engage with stakeholders as we take forward the next stages of this Review. This will include a full Review of the Parole Board Rules and a consultation on the creation of a reconsideration mechanism.

9. Guidance

- 9.1 Parole Board members will be required to undertake training, provided by the Parole Board, relating to disclosure of information about their hearings. This will include face to face training.
- 9.2 The Parole Board will also provide educational outreach to Victim Liaison Officers, offenders and media outlets to build understanding about the purpose, structures and processes of the Parole Board.

10. Impact

- 10.1 An Impact Assessment has not been completed for this policy.
- 10.2 However, an initial assessment of the additional resource required by the Parole Board to implement this new policy has been undertaken. The Ministry of Justice is committed to working with the Parole Board to ensure they have the resource required to undertake the additional work to put in place a more transparent approach, and will keep this need under review as new processes are rolled out.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 Establishing whether giving the Parole Board the discretion to disclose information regarding parole hearings has achieved the policy objective of increased public confidence in the criminal justice system (CJS) may be difficult. Although it is possible to monitor changes in public confidence in the CJS through the Crime Survey for England and Wales this would not allow any attribution to this policy specifically.
- 12.2 In collaboration with the Parole Board, the Ministry of Justice will monitor the demand for information under the new Rule 25, and will continue to consider what more needs to be done to support a more transparent approach to the reasons for Parole Board decisions relating to the release of offenders as part of the ongoing work to implement the other recommendations arising from the Review as well as the wider full Review of the Parole Board Rules.
- 12.3 The policy will be subject to a post implementation review after no fewer than 6 months, and the legislation may be amended accordingly.

13. Contact

- 13.1 Elly Brown at the Ministry of Justice (Tel: 07976 640162 or email: elly.brown@justice.gov.uk) can answer any queries regarding the instrument.