

**EXPLANATORY MEMORANDUM TO
THE PAROLE COMMISSIONERS' RULES (NORTHERN IRELAND) 2009**

SR 2009 No. 82

1. This Explanatory Memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

- 2.1 This instrument provides the statutory arrangements under which prisoners and young offenders serving life sentences (including those detained at the Secretary of State's pleasure), indeterminate (ICS) or extended (ECS) custodial sentences will be reviewed and assessed for release by the Parole Commissioners for Northern Ireland.

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

- 3.1 None

4. **Legislative Context**

- 4.1 This is the first use of Article 46(4) and Schedule 4(4) of the Criminal Justice (Northern Ireland) Order 2008 ("the Order") which confers the power on the Secretary of State to make these Rules. The Rules are required to ensure that the review arrangements for ICS and ECS sentences created by the Order are in place.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to Northern Ireland.

6. **European Convention on Human Rights**

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

7. **Policy Background**

- 7.1 The Criminal Justice (Northern Ireland) Order 2008 established new sentencing and release arrangements for Northern Ireland creating, amongst other powers, new sentences for dangerous offenders. The main purpose of the Order is to increase public protection by ensuring that dangerous offenders are subject to risk assessment; are only released when it is safe to do so; and that they are supervised in the community as appropriate.

7.2 Subject to the requirements of the Order, offenders convicted of specified serious sexual or violent offences who are determined to be dangerous can receive indeterminate custodial sentences (ICS) or extended custodial sentences (ECS). Dangerousness is assessed as to whether there is a significant risk of serious harm to members of the public by the commission of further such offences.

7.3 Release from ICS or ECS disposal also involves a dangerousness assessment by the Parole Commissioners for Northern Ireland (PCNI). Again this is based on reports specifically prepared for that purpose by prison staff, probation officers, psychiatrists or psychologists. (PCNI was also established by the Order and replaced what was the Life Sentence Review Commissioners (LSRC) for Northern Ireland. PCNI therefore assumes responsibility for the consideration of life sentence along with the new ICS and ECS cases.)

7.4 On the basis of dossiers prepared on behalf of the Secretary of State by prison and specialist staff, prisoners are risk assessed by PCNI who can release or require them to remain in prison until risk has sufficiently diminished to allow supervision in the community. On release, prisoners are placed under the supervision of probation officers and can be recalled to prison for breach of conditions. Recalled cases are referred to and reviewed by PCNI.

7.5 The Parole Commissioners' Rules determine the statutory arrangements whereby prisoners' cases are referred to and considered by PCNI either for release or recall purposes.

7.6 The Rules are made up of seven Parts and two Schedules.

7.7 Part 1 provides for the title, commencement and interpretation of terminology and statutory references throughout the Rules. Part 2 gives the Commissioners general powers to regulate their procedures; to manage cases and, where necessary, to interview prisoners. Part 2 also allows for the new post of deputy Chief Commissioner to act as the Chief Commissioner in appropriate circumstances.

7.8 Part 3 provides for the listing and consideration of cases and includes Rules on timetables; prisoner representation; evidence and information; hearing procedure; directions and decisions of Commissioners.

7.9 Specified time intervals are required between relevant stages all of which add up to around 26 weeks for consideration for release. Parts 4 and 5 (below) allow for speedier processes in certain cases such as recalls or cases where remand time has significantly reduced the time available to tariff expiry.

7.10 In terms of prisoner representation, restrictions are placed on who cannot act for a prisoner – he/she cannot be represented by serving prisoner, a life licensee, or a person released on a sex offender licence for example.

7.11 In terms of information requirements, the Secretary of State must prepare a dossier and provide it to the Commissioners and the prisoner. The details of dossier content are provided in the Schedules (described below). Certain information can be withheld from the prisoner on two grounds. Firstly where it would adversely affect the prisoner's or any other person's health or welfare (for example, medical information) – though such information can still be provided to the prisoner's legal representative. Secondly, information can be withheld on confidential grounds such as national security or substantial harm to public interest. In such circumstances a gist of the relevant information is provided to the prisoner or his representative. If a hearing were to be required at which confidential information needed to be deployed a Special Advocate would be appointed by the Attorney General. The Special Advocate would act for the prisoner and, with PCNI approval, can seek information from the prisoner.

7.12 A single Commissioner or a panel of Commissioners can consider prisoners' cases in appropriate circumstances. The single Commissioner will be able to manage cases setting timings etc. and ensure dossiers and responses are assembled on time. He/she will consider the case on the papers and can then provisionally direct release, non-release, or refer it to a panel. A panel is required where a prisoner challenges non-release; where a single Commissioner refers the case to the panel; and also when there is a provisional direction for release. All directions for release must be considered by a three-person panel. The Chief Commissioner can consider appeals of procedural matters arising from single Commissioner and Panel decisions.

7.13 Hearings are in private and will be held in prison by and large. A hearing could be held elsewhere – for example if a prisoner was already on licence and it was a licence matter under consideration - if all parties were in agreement. Where a three-person panel considers the case, the decision of the majority is the decision of the panel.

7.14 Parts 4 and 5 provide for cases where particular expediency is required on the grounds of a recall or a prisoner who may need a priority review. In essence these two Parts allow normal timescales to be set aside. Part 6 provides procedural arrangements around service of documents, correcting mistakes etc. Part 7 provides for life sentence cases already in the system to be mapped into the PCNI Rules and for the LSRC Rules to be revoked. Any existing life sentence prisoner who is already mid-review would have the LSRC Rules applied until his current review is complete.

7.15 The Schedules to the Rules specify the contents of the dossiers to be used when considering prisoners' cases. Contents include information relating to the prisoner including name, date of birth, prison, conviction and sentence details including sentencing remarks. Previous convictions, sentences, licences, release and temporary release, recalls and previous applications to PCNI are also to be included.

7.16 Reports on the prisoner will contain pre-trial and pre-sentence reports; current reports on the prisoner's performance and behaviour in prison including compliance with sentence planning, psychology reports and suitability for release; probation reports on the prisoner's view of his/her offending, attitude to release and supervision; home circumstances, employability, community and victim attitudes; suitability for release, risk of offending and serious harm, programme of supervision and recommendations for licence conditions.

7.17 Where a prisoner is recalled from licence, similar material is required along with reasons for recall and performance under supervision.

7.18 In terms of consolidation, the Parole Commissioners' Rules replace the Life Sentence Review Commissioners' Rules 2001 (No. 317) combining them into a single set of Rules to cater also for ICS and ECS sentences as created by the Criminal Justice (Northern Ireland) Order 2008 (No. 1216 N.I. 1).

8. Consultation Outcome

8.1 The parent Order was subject to full and public consultation with the majority of respondents fully supportive of the sentencing proposals and the introduction of public protection sentences. An Ad-Hoc Committee of the Northern Ireland Assembly was established to consider the draft Order and produced a formal Report which was ratified by the Assembly supporting the sentencing proposals. A summary of the responses is available on www.nio.gov.uk.

8.2 The Parole Commissioners' Rules have been developed by the Northern Ireland Office in full consultation with each of the key bodies involved in the process: the Parole Commissioners; the Northern Ireland Prison Service; and the Probation Board for Northern Ireland. They have been endorsed by the wider criminal justice system in Northern Ireland including the Northern Ireland Court Service; the Public Prosecution Service for Northern Ireland; the Youth Justice Agency; and the Police Service of Northern Ireland.

9. Guidance

9.1 A set of Explanatory Notes on the Criminal Justice (Northern Ireland) Order 2008 describing the new disposals and their requirements has been published and made available by the Northern Ireland Office. Guidance on the Rules will be available from the Parole Commissioners and from the Northern Ireland Office.

10. Impact

10.1 A Regulatory Impact Assessment was completed on the sentencing provisions of the Order as a whole. The Order will not create additional burdens for business charities or voluntary bodies.

10.2 Impact on the public sector will fall primarily on the Northern Ireland Prison Service, the Probation Board for Northern Ireland and the Parole Commissioners for Northern Ireland. Resources have been made available to ensure effective implementation of the provisions

11. Regulating small business

11.1 The legislation does not apply to small business

12. Monitoring and review

12.1 The operation of the Parole Commissioners' Rules will be monitored and reviewed on a regular basis by Criminal Justice Policy Division of the Northern Ireland Office in conjunction with the Parole Commissioners, the Northern Ireland Prison Service and the Probation Board for Northern Ireland.

13. Contact

13.1 Tom Haire at the Northern Ireland Office Tel: 028 9052 9122 or email: tom.haire@nio.x.gsi.gov.uk can answer any queries regarding this instrument.