

## THE PAROLE BOARD (AMENDMENT) RULES 2022

### Equality Statement

#### Purpose of this Document

1. This Equality analysis has been undertaken to assist the Secretary of State in making decisions on implementing changes to the Parole Board Rules following the recent publication in March 2022 of the Root & Branch review of the parole system and commencement of the Police, Crime, Sentencing & Courts Act 2022. It supports the Secretary of State in fulfilling his duty under the Public-Sector Equality Duty (PSED) by having due regard to the equality impact of the new Parole Board (Amendment) Rules 2022.
2. This document assesses the potential equalities benefits and risks that have been identified. It considers any necessary mitigating actions which have been proposed to reduce the likelihood of the risks and includes an assessment of any equalities benefits.

#### Ministry of Justice and the Public Sector Equality Duty

3. Under the [Equality Act 2010](#)<sup>1</sup>, when exercising its functions, the MoJ has an ongoing legal duty (known as the Public Sector Equality Duty – PSED) to pay due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
  - advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not; and
  - foster good relations between different groups.
4. We also recognise that, as well as having an obligation not to directly or indirectly discriminate against disabled people, the MoJ as a service provider has a duty to make reasonable adjustments for disabled people.
5. The payment of due regard to the PSED needs to be considered in light of the nine protected characteristics:
  - Race
  - Sexual Orientation
  - Marriage/Civil Partnership
  - Gender
  - Religion or Belief
  - Gender Reassignment
  - Disability
  - Age
  - Pregnancy/Maternity

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<sup>1</sup> [http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf)

## **Root and Branch review of the parole system**

6. The Root and Branch review was a manifesto commitment made by the government in 2019. Its purpose was to draw together and evaluate the outcome of changes made to the system since 2018 and to explore the case for further legislative reform of the system. The review was published on 30 March 2022 and the Parole Board (Amendment) Rules 2022 delivers on some of its findings.

## **Removal of the privacy requirement to enable public hearings**

7. The Statutory Instrument delivers on a government commitment made in February 2021 to enable the Parole Board to hold some hearings in public. Previous versions of the Rules contained a provision that all hearings “must be held in private”. This prevented any possibility of holding a public hearing and was therefore a significant barrier to the government’s desire to create a more open and transparent parole system. The privacy requirement has been removed and new rules have been added to enable the option of holding a hearing in public. We expect that the vast majority of hearings will continue to be held in private.

## **Recommendations on suitability for release or transfer to open prison**

8. Previous versions of the Parole Board Rules have required prison and probation staff to include a recommendation on a prisoner’s suitability for release or transfer to open conditions as part of their written reports which are submitted to the Parole Board and included in the dossier of written evidence. The SI is making changes to the way that recommendations will be made in future.
9. Report-writers will no longer be required to offer a recommendation in any cases. Instead of recommendations from report writers, where deemed appropriate, the Secretary of State will now submit a single view based on all the evidence which will be overseen by ministers.

## **Police, Crime, Sentencing & Courts (PCSC) Act 2022**

10. The Statutory Instrument sets out the procedural rules for two significant changes to parole and release legislation made in the PCSC Act.
11. First, a new power has been created for the Parole Board to set aside its own decisions where the decision resulted from a clear mistake of law or fact. The criteria are:
  - Decisions not to release and directions to release may be set aside where the Parole Board determines that its decision or direction resulted from an error of law or fact;
  - Directions to release only may also be set aside where the Parole Board determines it would not have made the direction if either:
    - a) information that was not available to the Board when the direction was given had been available; or
    - b) a change in circumstances relating to the prisoner that occurred after the direction was made had occurred before it was made.

12. The power to set aside a release direction may only be used while the prisoner remains in custody awaiting release. The Secretary of State or the prisoner may apply to have a decision set aside, or the Parole Board may do so of their volition.
13. The second change relates to the process by which those sentenced to Imprisonment for Public Protection (IPP) are considered for termination of their licence. New measures in the PCSC Act require the Secretary of State to refer IPP prisoners automatically to the Parole Board for consideration of licence termination when they reach the point of eligibility 10-years after their initial release. Previously, the legislation required offenders to apply themselves for licence termination and amendments to the Parole Board Rules are necessary to reflect the change to automatic referral.

## Sources of Information

14. Information about offenders and victims has been drawn from data published by the Office of National Statistics. This includes the Ministry of Justice's latest Offender Management statistics quarterly for England and Wales<sup>2</sup>, the most recent Crime in England and Wales report<sup>3</sup> and data from the 2011 census<sup>4</sup>. Consultation with policy makers and information gathered by the review from multiple stakeholders has also informed analysis.

### *Unavailable Data*

15. Publicly available data about protected characteristics is unavailable for prisoners serving sentences which involve release by the Parole Board (including life sentences, imprisonment for public protection (IPP) and extended determinate sentences) 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. Data is unavailable with respect to Parole Board members' protected characteristics, with the exception of gender, disability and race.

## Affected Groups

16. The proposed changes will have a direct impact on victims of crime, prisoners, the Parole Board and those who take part in parole hearings in a professional capacity. While 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 on the characteristics associated with being a victim of homicide or of a violent or sexual crime.

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<sup>2</sup> *Offender Management statistics quarterly: October to December 2021*, accessed at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2021>

<sup>3</sup> *Crime in England and Wales: year ending March 2022*, accessed at <https://www.ons.gov.uk/releases/crimeinenglandandwalesyearendingmarch2022>

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

Relative to the general population, victims of homicide are more likely to be male.<sup>5</sup> Victims of all types of sexual assault are far more likely to be female.<sup>6</sup> Victims of all types of domestic violence are also far more likely to be female.<sup>7</sup> Victims of almost all other violent crime are more likely to be male, aged between 16 and 24, be single or separated, or have a disability.<sup>8</sup>

17. We know that not all prisoners have sentences that require referral to the Parole Board but 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.<sup>9</sup>
18. The Parole Board has successfully taken steps to improve the diversity of its membership. Of the 274 Parole Board members who responded to declarations regarding ethnicity, disability and gender in 2020/21, 60% were female, 17% were BAME and 12% declared a disability.<sup>10</sup>
19. Many of the policies being proposed will be rolled out across England and Wales and their development will include working in partnership with the Welsh Government and HMPPS Cymru. Our consideration of equalities includes ensuring that our policies are developed and implemented in line with MoJ and HMPPS Welsh Language Schemes. Additionally, proposals concerning 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.

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<sup>5</sup>See Homicide in England and Wales: year ending March 2021, §3, <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2021>

<sup>6</sup> See *Sexual offences victim characteristics, England and Wales: year ending March 2020*, § 3, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesvictimcharacteristicsenglandandwales/march2020>

<sup>7</sup> See *Domestic abuse victim characteristics, England and Wales: year ending March 2021*, §4, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2021>

<sup>8</sup> See *The nature of violent crime in England and Wales: year ending March 2020*, §7, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/thenatureofviolentcrimeinenglandandwales/yearendingmarch2020>

<sup>9</sup> See Prison Population 31 March 2022: *Offender Management statistics quarterly: October to December 2021*, accessed at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2021> 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 (96.6% of life and IPP prisoners as opposed to 96.0% 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.

<sup>10</sup> *Parole Board for England and Wales Annual Report & Accounts: 2020/21*, accessed at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1029613/Parole\\_Board\\_Annual\\_Report\\_2020-21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029613/Parole_Board_Annual_Report_2020-21.pdf)

## **Positive Impacts on People with Protected Characteristics/Advancement of Equality of Opportunity**

### *A. Removal of the privacy requirement to enable public hearings*

20. The primary aim behind the introduction of public hearings is to improve the transparency of the parole process. Previous versions of the Parole Board Rules have required that all hearings must be heard in private which allows the Parole Board no discretion to have a more open hearing even where they may feel it would be beneficial to do so. We do not believe that a blanket ban is necessary and the Parole Board should be able to receive and consider requests to hear some cases in public. This will enable greater scrutiny of the system that has the potential to benefit prisoners, victims and the wider public.
21. Where a prisoner has made genuine and significant progress in addressing their level of risk then a public hearing may assist the victim and the media in understanding the reasons for a decision to release them. Where the decision is against release then the public nature of the hearing may increase trust and public confidence that the parole system is effectively protecting the public. Regardless of the outcome, public hearings will demonstrate the professionalism, dedication and diligence of all those involved in parole hearings.

### *B. Recommendations on suitability for release or transfer to open prison*

22. Witnesses who provide evidence to the Parole Board on behalf of the Secretary of State will continue to provide a factual risk assessment but will no longer be required to give a recommendation about a prisoner's suitability for release or transfer to open prison. This may benefit the individual report writer in some cases because it may go some way to protect them from the risk of harassment where the outcome of the parole review is controversial as they will no longer be giving personal recommendations. For example, we are aware of instances where individuals have been criticised in the media for having given their professional opinion that a prisoner could safely be released.
23. Report writers will still provide evidence about a prisoner's progress in custody to inform the Parole Board's decision and prisoners will still be able to submit their own evidence, such as independent psychological assessments, in which they are not prevented from making recommendations as to the prisoner's suitability for release or transfer to open conditions. As such, we do not expect the absence of a recommendation from the Secretary of State's witnesses to detract from the overall level or quality of evidence the Parole Board will have and it should not affect parole outcomes in any significant way.
24. In the most serious cases, the Secretary of State may decide to submit a single view which takes account of all the evidence from his witnesses. The view will serve to summarise the evidence and emphasise key points in order to highlight factors that the Secretary of State feels need to be explored during a hearing. Where a view is submitted, the Secretary of State will be represented at the hearing by a barrister or a Secretary of State Representative.
25. The Secretary of State's view is not binding on the Parole Board in any way but by highlighting important issues at an early stage, it will allow the Board to explore the

Secretary of State's concerns during the review and address them in their decision. The use of a single view and the presence of Secretary of State representation at hearings may therefore benefit prisoners in a number of ways, for example by reducing delays, helping to identify a clear sentence plan and avoiding the need for the Secretary of State to seek reconsideration. Identifying the salient issues at an early stage, reducing delays and reaching a fully informed decision is beneficial to all those involved in the parole process, including victims.

### *C. Police, Crime, Sentencing & Courts (PCSC) Act 2022*

26. The power to set aside a parole decision may be used by either of the parties to the process (the Secretary of State or the prisoner). Where an application is made, the other party will be notified and allowed an opportunity to submit representations before a decision is made. Victims may ask the Secretary of State to apply on their behalf using the process that already exists for the reconsideration mechanism.
27. The provisions will increase the range of circumstances in which a parole decision can be re-taken administratively without resorting to judicial review proceedings. This will benefit prisoners because an administrative process will provide a faster means of resolving any issues than a legal challenge. It will also be more straightforward to use for prisoners who may not have access to legal representation but care must be taken to ensure prisoners without legal assistance are aware of their right to apply.
28. The changes to IPP licence terminations will mean all eligible offenders are referred to the Parole Board automatically when they become eligible. This removes any disadvantage that may have been present before for offenders who may not have been aware they could apply, or who would have found it difficult to make an application to the Parole Board themselves if they were not legally represented. Having their licence terminated means the offender is no longer subject to any restrictions and cannot be recalled to prison.

### **Adverse Equality Impacts**

#### *Direct Discrimination*

29. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this policy is not directly discriminatory within the meaning of the 2010 Act, as the changes from this policy would be applied in the same way to all participants in the parole process.

#### *Indirect Discrimination*

30. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
31. Below, we have outlined the risks of our reforms and how we intend to mitigate them.
32. There is little evidence currently available to substantiate the risks detailed below. If the policies could be shown to place these groups at a disadvantage, we believe it is a

proportionate approach to achieve the legitimate aims as detailed above. Broadly, we believe the principles of open justice and public interest and confidence in the system necessitate the changes outlined and that they are appropriately balanced against consideration of, and protections for, individual privacy, personal risk and rehabilitation.

*A. Removal of the privacy requirement to enable public hearings*

33. Anyone with disabilities who participates in a public hearing would need reasonable adjustments to ensure they are able to partake in the hearing. The venue of a public hearing will need to have suitable access for people with mobility issues, such as ramps for wheelchair access.
34. Responses to the government's public consultation indicated that there was concern about the possible impact on the wellbeing of prisoners and victims if hearings were held in public. In taking a decision on whether to allow an application for a public hearing, the Parole Board will need to take into account any mental health concerns that may be present in the case in relation to prisoners and victims. Any concerns will need to be balanced against the reasons given in support of the application and whether it would be possible to make any reasonable adjustments that would enable a public hearing to go ahead.
35. As part of a parole hearing, the panel often need to discuss sensitive information, if they feel it is relevant to their assessment of risk. This can sometimes involve sensitive information about the index offence and the prisoner's actions at the time, or matters pertaining to their current physical or mental health, sexuality or gender identity which, by nature, involves personal information about them. The evidence may also reveal information that a victim has never heard which they may find distressing to learn for the first time in that context. If such information were to be revealed in a public hearing, it could potentially have a harmful impact on prisoners or victims (and their families). Care will need to be taken to decide whether that information is revealed during a hearing or needs to be protected to mitigate any potential adverse impacts.
36. Before a decision on a public hearing is made, prisoners and victims signed up to the Victim Contact Scheme will be notified and offered the chance to put forward their views. HMPPS will also make every effort to alert any victims who are not part of the scheme. To mitigate risks, the Parole Board have said that public hearings are unlikely to take place if there is any evidence that it would cause unnecessary harm to either the victim or the prisoner. If a public hearing is allowed, then the Board can decide to hear especially sensitive parts of the evidence in private in order to limit its disclosure. We expect there will be a case conference before any public hearings to decide how the hearing will be managed and whether any evidence needs to be heard in private.
37. Child prisoners are likely to be at risk of greater harm from a public hearing, as public knowledge of their information may have a more harmful impact on their rehabilitation, resettlement and avoidance of re-offending. The Parole Board Rules do not exclude any types of cases from being heard in public because we felt it was important that the Parole Board should always be able to make a decision on the facts of the individual case. While the final decision rests with the Board, they have said that cases involving children aged under 18 are unlikely to be found suitable to hear in public.

38. The implementation of public hearings means the identities of those who take part in a professional capacity, including Parole Board panel members, solicitors and HMPPS staff will be subject to greater scrutiny and therefore vulnerable to potential harassment.
39. Care will need to be taken to ensure identities are protected as much as possible, such as ensuring images or recordings of witnesses/panel members are not taken and shared on social media. This is a particular risk in cases of high notoriety or public interest, which are most likely to be the types of cases where an application will be made to hear them in public. Support should be given to those expected to give evidence at a public hearing, and training on how to give evidence and protect themselves from harassment should also be considered for witnesses and panel members who partake in public hearings. The risk of harassment may be reduced for HMPPS staff because they will now only be providing factual risk assessments and will no longer provide a personal recommendation about suitability for release or, for indeterminate prisoners only, a transfer to open prison conditions (see next section for more information on changes to the way the Secretary of State will make recommendations to the Parole Board).

*B. Recommendations on suitability for release or transfer to open prison*

40. The Secretary of State will determine which cases require a formal view to be submitted to the Parole Board. This is likely to be limited to a small number of the most serious or high-profile prisoners where ministers consider it is important to put forward a single view. These will likely be drawn from, but not limited to, the top-tier of parole cases as identified by the Root and Branch review, namely those prisoners convicted of murder, rape, terrorism (or a terrorism-related offence), and causing or allowing the death of a child.
41. This will result in some parole-eligible prisoners being treated differently than others but we believe this is justified by the nature and gravity of the offences involved. It will not affect their statutory right to have their detention reviewed by the Parole Board and the Board will continue to apply the same statutory release test that is used in all parole cases.
42. As we have stated above, the Secretary of State's view is not binding on the Parole Board in any way and the Board will continue to receive the same level and quality of evidence as they do currently before reaching a decision.

*C. Police, Crime, Sentencing & Courts (PCSC) Act 2022*

43. Measures in the Rules that give effect to provisions in the PCSC Act must be applied in a way that does not discriminate against prisoners in any way.
44. The provisions will increase the range of circumstances in which a parole decision can be re-taken administratively without resorting to judicial review proceedings. It has only been necessary for the Secretary of State to judicially review two parole decisions in recent years on grounds that will, in future, be eligible for the setting aside power so we anticipate that it will be used very rarely. As such, there is no evidence to suggest that the new powers could be used in a discriminatory way but this will be monitored.



45. All offenders eligible for IPP licence terminations will be referred to the Parole Board automatically. This removes any discrimination that may occur in the outgoing system that relied on applications from individuals but care needs to be taken that offenders without legal representation are aware of the purpose of the referral and any reasonable adjustments are made so they can fully participate in the process.

### **Fostering Good Relations**

46. The Root and Branch Review of the Parole System set out plans for greater oversight of the system by means of a new senior-level Parole System Oversight Group and new third-party scrutiny. We have also previously announced our intention to create a Rules Committee to oversee future changes to the Parole Board Rules: to review the impact the Rules are having and consider whether changes are needed to make further improvements – which may include any changes in response to any perceived or actual inequality of impact. These new oversight arrangements will be put in place over the next 12 months and will see the Ministry of Justice, the Parole Board and HMPPS continuing to work together closely to monitor and improve the operation of the parole process.

### **Continuing Analysis**

47. The equality duty is an ongoing duty and we will continue to monitor and review these measures for any potential impacts on persons with protected characteristics and make sure that access to justice is maintained.