**EXPLANATORY MEMORANDUM TO**

**THE CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2025**

**2025 No. 1229**

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

## 2. Declaration

2.1 Baroness Levitt KC, Parliamentary Under-Secretary at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Andrew Waldren, Deputy Director for Sentencing and Parole Policy at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Abi Marx at the Ministry of Justice. Email: Abigail.marx@justice.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

*4.1* This instrument amends the Civil Procedure Rules 1998 ("the CPR") which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and the County Court. This instrument amends Part 77, which makes provision in support of criminal justice, to provide rules to govern the procedure in those cases where certain release decisions of the Parole Board are referred to the High Court under powers in the Crime (Sentences) Act 1997 ("the 1997 Act") and the Criminal Justice Act 2003 ("the 2003 Act").

***Where does the legislation extend to, and apply?***

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## 5. Policy Context

***What is being done and why?***

5.1 Sections 61 and 62 of the Victims and Prisoners Act 2024 introduced a power enabling the Secretary of State for Justice to direct the Parole Board to refer certain of its release decisions to the High Court. This was achieved by sections 61 and 62 inserting sections 32ZAA-32ZAC in the Crime (Sentences) Act 1997 and sections 256AZBA-256AZBC in the Criminal Justice Act 2003 for indeterminate and determinate prisoners respectively. The relevant provisions of the Victims and Prisoners Act 2024 and these rules come into force on 31 December 2025.

5.2 Under the Act, on referral of a prisoner's case, the High Court must decide whether the statutory release test is met; that is, whether it is no longer necessary for the protection of the public that the prisoner should be confined (s.28ZA(2) of the Crime (Sentences) Act 1997 and s.237A(2) of the Criminal Justice Act 2003 for indeterminate and determinate sentenced prisoners, respectively). The referral is not a review of the Parole Board's release decision but an obligation on the High Court to make its own determination on the statutory release test. If the High Court is satisfied that it is no longer necessary for the prisoner to be confined then it must order the Secretary of State to give effect to the Parole Board's decision to release the prisoner on licence. If the High Court is not satisfied that the release test has been met, it must quash the Parole Board's release direction and the prisoner must remain in custody until their next parole review.

5.3 The Department refers to these cases as "parole referral cases". The parole referral power applies to serving prisoners who are convicted of a 'top tier' offence where the Parole Board's release direction is given on or after 31 December 2025. Top tier offences are murder, rape, terrorism and terrorism-connected offences and causing or allowing the death of a child, as set out in s.32ZAB of the Crime (Sentences) Act 1997 and s.256AZBB of the Criminal Justice Act 2003.

5.4 Part 77 provides rules for civil proceedings in the High Court that support criminal justice legislation. These Rules insert a new Section – Section 3 – which is sub-divided into two Sub-Sections. In Sub-section 1, rules 77.16 to 77.20 set out how proceedings will be started in the High Court, covering practical issues such as timeframes, what constitutes a referral and the process it will follow. In detail:

- Rule 77.16 sets out the legislative basis for the referral to the High Court for indeterminate and determinate sentenced prisoners respectively.
- Rule 77.17 applies the CPR Part 8 procedure (alternative procedure for claims) to parole referral cases with the modifications to that Part included in these rules.
- Rule 77.18 defines the parties and procedural framework for High Court proceedings under this section. The referral to the High Court must be made by the Parole Board in accordance with the legislation (see s.32ZAA(2) of the Crime (Sentences) Act 1997 and s.256ZABA(2) of the Criminal Justice Act 2003), but rule 77.18 provides that the referral of a release decision is treated as an application by the Secretary of State, making the Secretary of State the claimant and the prisoner the defendant. The Parole Board and victims are expressly excluded as parties to proceedings so that proceedings mirror those before the Parole Board (where the Secretary of State and the prisoner are the parties) and to further support a streamlined and efficient process.
- Rule 77.19 sets out the procedure for making an application. Although the referral is made by the Parole Board, as the claimant it is the responsibility of the Secretary of State to serve the claim form and evidence on the prisoner and to comply with disclosure obligations. The claim form must confirm the basis for the referral and identify the statutory power used. Within two days of the claim form being filed, the Secretary of State must serve on the prisoner the reasons for the application together with any supporting evidence and further relevant information.
- Rule 77.20 provides that service on a prisoner without legal representation must be by way of personal service in accordance with rules 6.5 and 6.22. In practice, the claim form and any documents will be served by a member of prison staff.

5.5 In Sub-section 2, rules 77.21 to 77.33 set out the procedure regarding applications for non-disclosure of information to the prisoner and/or their legal representative. In detail:

- Rule 77.21 provides that an application for non-disclosure can be made either when the Secretary of State files their reasons for the referral and other supporting documentation or when filing any subsequent material.
- Rule 77.22 provides that applications for non-disclosure on the grounds that disclosure may damage the interests of national security (which are subject to Part 2 of the Justice and Security Act 2013), will be subject to the closed material procedure in Part 82 of the CPR.
- Rule 77.23 (and the rules that follow) provide a bespoke procedure for applications for non-disclosure of other information (referred to as "relevant material"), an example of which would include police or prison intelligence. The court must direct that the relevant material be withheld where it considers that disclosure would adversely affect the prevention of disorder or crime or cause harm to the health and welfare of any person, and that withholding the material is a necessary and proportionate measure. The court can order a range of measures including full non-disclosure, disclosure in a redacted or summary form, or disclosure only to a legal representative on giving the required undertaking, or to a special advocate.
- Rule 77.24 sets out the procedure for making an application for non-disclosure. Applications must include the relevant material, the reasons for withholding it, and any proposed redacted version. The Secretary of State must also indicate whether they will abandon reliance on the material if the application fails.
- Rule 77.25 deals with the court's consideration of an application for non-disclosure. The rule provides that the court may determine an application with or without a hearing. It prescribes what the prisoner's legal representative, or the Secretary of State must do, and when they must do it by, depending upon the court's direction. In particular, if the court refuses an application, the Secretary of State may choose not to rely on the material and need not disclose it, but the court may require concessions if withholding the relevant material adversely affects the Secretary of State's case or supports the prisoner's case.
- Rule 77.26 requires the court to direct that the prisoner be excluded from any, or any part of, a hearing where it considers it necessary to ensure that relevant material that has been withheld from the defendant is not disclosed to them.
- Rules 77.27 to 77.30 set out the procedure for the appointment, role, and participation of special advocates in parole referral cases regarding the non-disclosure of relevant material. Once appointed, a special advocate represents the prisoner's interests by making submissions, challenging evidence, and cross-examining witnesses at hearings from which the prisoner is excluded as well as making written submissions on the withholding of relevant material. The Secretary of State may only rely on relevant material withheld from the prisoner if it is disclosed to the special advocate. Rules 77.28 and 77.29 include provision which limits communication between the special advocate and the prisoner and their legal representative once the advocate has received that material and the procedure for applying for and objecting to the court allowing the special advocate to communicate with the prisoner.

- Rules 77.31 allows the court, when making an order under the 1997 or 2003 Acts, to withhold all or part of its reasons if disclosure would adversely affect the prevention of disorder or crime or the health or welfare of any person. Where reasons are withheld, the court must provide a separate written judgment to the claimant, the defendant's legal representative (if appropriate), and, if appointed, the special advocate.
- Rule 77.32 disapplies the usual provisions on supplying court documents (rules 5.4B and 5.4C) in any proceedings where non-disclosure rules under this Sub-section apply, unless the court directs otherwise.
- Rule 77.33 confirms that in these cases Part 52 (appeals) applies to an appeal to the Court of Appeal, and that an appeal is subject to the rules on non-disclosure. This rule further requires service of the appellant's notice on any special advocate, and provides that appeals will normally be determined at a hearing unless the court orders otherwise.

5.6 The new rules, together with the amendments to Practice Direction 77, set out how parole referral cases will progress efficiently through the High Court to allow for a decision by the High Court on whether the statutory release test is met.

***What was the previous policy, how is this different?***

5.7 The parole referral power is a new power and therefore there was no need for rules in this area prior to its creation.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The parole referral power introduces a new category of cases that will be heard in the High Court. CPR are made by the CPRC under the Civil Procedure Act 1997 and are regularly amended as a result of changes to legislation, policy or procedure.

***Why was this approach taken to change the law?***

6.2 This is the only possible approach to provide rules for the High Court to follow.

## 7. Consultation

*7.1* The CPRC must, before making CPR, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). The CPRC consults, as it considers appropriate to the rules or amendments to the rules in question, in a number of ways and to differing degrees of formality. For example, by specific correspondence with bodies it considers appropriate; involving representatives of interested organisations; and inviting and reviewing suggestions from relevant government departments or authorities affected by rules of civil procedure.

***Summary of consultation outcome and methodology***

*7.2* The CPRC undertook a public consultation that ran from 14 July to 8 September.[1] The consultation invited comments on the proposed rules and their drafting, with a focus on whether the draft rules were operationally effective and would work in practice.

*7.3* The CPRC received 4 responses to the consultation. Responses included comments outside the scope of the consultation, such as on the underlying policy behind the

[1] https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about.

referral power. These points were outside the scope of the consultation and so are not reflected in this SI.

*7.4* Consultation responses were considered by a sub-committee of the CPRC made up of members of the judiciary, MoJ parole policy, HMPPS, HMCTS and the Government Legal Department. One amendment was made to create an explicit rule (77.20) to set out that the rules on personal service apply when serving documents on an unrepresented defendant in prison.

*7.5* Other responses to the consultation can be divided into four themes. The sub-committee of the CPRC and the CPRC carefully considered all of these themes, but for the reasons given below, did not decide to make any amendments.

7.6 First, one respondent, whose response were endorsed by two other respondents, were concerned by the lack of timeframe for the Secretary of State to direct the Parole Board to make the referral to the High Court. The CPRC noted that the primary legislation is silent on a timeframe for making a referral, using the phrase "as the Secretary of State reasonably requires" (see, for indeterminate prisoners, s. 32ZAA(3)(a) Crime (Sentences) Act 1997) and therefore it would not be appropriate for secondary legislation to prescribe a timeframe that would supersede the primary legislation.

7.7 Relatedly, the same respondents raised concerns with the timelines within the rules for certain actions to be completed, for example, 7 days for a legal representative to sign an undertaking not to share non-disclosable material with their client (77.25(3)). In respect of other timelines, the CPRC noted the High Court's existing powers to grant extensions of time under CPR 3.1. It considered that existing powers are sufficient and the timelines prescribed in the rules support the objective of deciding the case as speedily as possible given the prisoner remains confined for the duration of the referral.

*7.8* Secondly, one respondent, whose response were endorsed by two other respondents, were concerned about the lack of prescriptive rules to govern things like case management conferences, admission of evidence, attendance at hearings and the ability of the court to strike out unmeritorious claims on the papers. The CPRC noted and agreed that the existing powers of the High Court are sufficient to deal with these issues and so duplication of these rules in Part 77 was unnecessary.

7.9 Thirdly, two respondents were concerned that there is no general rule for hearings in parole referral cases to be held in private. The sub-committee and CPRC's view remained that the principle of open justice is paramount and should not be derogated from lightly. Further, holding any hearings in public supports one of the objectives of the power to improve public confidence in the parole system. The CPRC further noted the existing power in CPR 39.2 which, in their view, provides sufficient safeguards in the event that all, or part, of any hearing should be held in private.

*7.10* Fourthly, one respondent suggested that the Parole Board should be an interested party in parole referral proceedings. The CPRC considered that, as parole referral proceedings are not a review of the Parole Board's policies or procedure but an assessment of risk as to whether the prisoner is safe to be released, it is not necessary for the Parole Board to be an interested party. The CPRC noted that relevant information from the Parole Board will be provided to the court as per rule 77.19(2).

*7.11* The consultation responses, the proposed addition of rule 77.20 in light of the consultation responses and the final Rules, were then considered and agreed by the CPRC on 7 November 2025.

## 8. Applicable Guidance

8.1 There is no guidance to accompany this SI. However, amendments to the CPR are drawn to the attention of participants in the civil justice system and to representative bodies (such as the Law Society of England and Wales and the General Council of the Bar) by correspondence. News of changes to the CPR, together with the consolidated version, are published on the Ministry of Justice website.[2]

## Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument is confined to court processes and procedures.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because no, or no significant impact, is foreseen.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The approach to monitoring this legislation is review by the CPRC, who continuously review the CPR and make amendments accordingly.

10.2 The instrument does not include a statutory review clause.

[2] https://www.justice.gov.uk/courts/procedure-rules/civil/rules.

## Part Three: Statements and Matters of Particular Interest to Parliament

### 11. Matters of special interest to Parliament

11.1 Clause 40 of the Sentencing Bill contains an amendment to correct an unintentional omission to ensure that the referral power can also be used where the Parole Board has directed the unconditional release of a prisoner. This amendment in the Sentencing Bill does not have an impact on these rules.

11.2 The Parole Board (Amendment) Rules 2025, also laid before Parliament, contain rules necessary for the Parole Board to perform their function in referring cases to the High Court.

### 12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary has made the following statement regarding Human Rights:

"In my view the provisions of the Civil Procedure (Amendment No. 3) Rules 2025 are compatible with the Convention rights."

### 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").