EXPLANATORY MEMORANDUM TO

THE PAROLE BOARD (AMENDMENT) (NO. 2) RULES 2026

2026 No. 204

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.

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

2. Declaration

2.1 Baroness Levitt KC, Parliamentary Under Secretary of State, can confirm that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Kevin Breame at the Ministry of Justice. Email: kevin.breame1@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 makes amendments to the Parole Board Rules 2019. These changes are necessary to reflect changes in policy and to improve the effective operation of the parole process.

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 This instrument amends the Parole Board Rules 2019, making further changes to revert to the drafting of Rule 19 and Rule 20 as they were before the Parole Board (Amendment) Rules 2025 which was laid before parliament on 25 November 2025 and came into force on 16 December 2025.

5.2 The drafting of the November 2025 SI contained an error which meant the Rule 19 changes inadvertently applied much wider than intended and so it was necessary to bring forward a further SI to correct that as quickly as possible. A further SI (the

Parole Board (Amendment) Rules 2026), which narrowed the scope of the Rule 19 changes, was laid on 12 February and was due to come into force on 5 March.

5.3 The Rules are intended to ensure the parole process runs smoothly and efficiently and that fair and robust decisions are reached without delay. The changes to Rule 19 were introduced to make further improvements by allowing for certain cases to be decided on the papers, and only directed to oral hearing in exceptional circumstances, where an oral hearing would either be impractical (where the prisoner is due to be released automatically before an oral hearing could take place); or would create long delays before a decision in the case could be reached (where the prisoner is facing further criminal charges or investigation relevant to their risk and an oral hearing would likely need to be repeatedly adjourned until those outstanding matters are resolved).

5.4 We recognise, however, there is a complex interaction with the Supreme Court's judgment in the case of Osborn[1], as highlighted by the Joint Committee on Statutory Instrument's Forty-Sixth Report of Session for 2024-2026[2]. Whilst at the point it was laid in parliament, we considered that the Parole Board (Amendment) Rules 2026 had been sufficiently narrowed to deliver the policy intention, there remains a degree of concern around how this interacts with the case law and, on reflection, we have decided that further time and consideration is needed before we proceed with any changes which impact decisions on whether to direct an oral hearing.

5.5 The drafting issue with the November 2025 SI still needs to be corrected and for this reason, and also to avoid any ongoing uncertainty and concern about the impact of the changes, we have decided to revert to the drafting of Rule 19 and Rule 20 as they were before the November SI.

5.6 This will give more time to reflect on the best way to achieve the policy aim of improving the efficiency of the parole process by reducing oral hearings being directed, and resources expended, in cases where that is unlikely to enable the case to be concluded.

5.7 Reverting the drafting means that the rules will return to the previous position where there are no restrictions regarding the circumstances in which oral hearings should be directed and all such decisions will be at the discretion of the Parole Board on a case-by-case basis.

6. Legislative and Legal Context

6.1 The Criminal Justice Act 2003 allows for the making of rules governing the proceedings of the Parole Board by the Secretary of State for Justice. The Rules are periodically amended to reflect changes in legislation, procedure and any relevant case law.

7. Consultation

Summary of consultation outcome and methodology

7.1 We have notified the Parole Board about the reasons for this Instrument but did not seek their views before the decision was taken to revert the drafting to the pre-November 2025 position. The Parole Board were supportive of the measures in the

[1] https://supremecourt.uk/uploads/uksc_2011_0147_judgment_edf6183746.pdf
[2] https://committees.parliament.uk/publications/51345/documents/285017/default/

previous Instrument, to prescribe that certain categories of cases should only have an oral hearing directed in exceptional circumstances.

7.2 Given the requirement to act as quickly as possible to rectify the unintended impact of the November 2025 SI, we did not consult with any other organisations or bodies before deciding to proceed with this Instrument. The Association of Prison Lawyers (APL) was consulted prior to the February 2026 amendments. They voiced concerns about the legitimacy of any measures to restrict oral hearings. We took their views into consideration and, on the basis of this engagement, we expect they will welcome the decision to return to the pre-November 2025 position where there are no restrictions on the face of the rules.

8. Applicable Guidance

8.1 Guidance is published by the Parole Board on aspects of its operation which can be found on its gov.uk pages. HMPPS have published Policy Frameworks which detail how the parole process is conducted which are publicly available. Updated versions of guidance will be published that incorporate the changes made by this Statutory Instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 We previously estimated that changes to Rule 19 could save the equivalent of c.350 to c. 650 oral hearings annually at steady state. By not proceeding with the changes at this time, those benefits will not be achieved but we will continue to work with the Parole Board in order to identify other opportunities to improve efficiency and reduce delays.

9.2 A full Impact Assessment has not been prepared for this instrument because it refers to secondary legislation which is not expected to meet the impact threshold of £5 million per year required for a full Impact Assessment.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities, or voluntary bodies.

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

9.5 There is no significant impact on the public sector. The main bodies that will be impacted are HMPPS and the Parole Board.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause.

10.2 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 are discussed. In addition, the Ministry of Justice has established a Parole System Oversight Group and a Parole Board Rules Committee. These will serve to provide ongoing scrutiny of the parole system.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Department is bringing the SI into force in breach of the 21-day rule laying requirement. The Department apologises for such a breach, but to do otherwise could potentially cause disruption and uncertainty. This is because the 2026 amendments are due to come into force on 5 March. If we complied with the normal 21-day rule, it would mean that the 2026 amendments would only be in force for approximately three weeks before this Instrument replaces it. That would cause confusion and operational complexity for parole practitioners, offenders and victims and so we believe it is preferable for the Instrument to come into force immediately in order to minimise the disruption.

11.2 The Department apologises as well for laying this further instrument to override the February SI before it comes into force, recognising that this is not best practice; but we consider this to be necessary for the reasons above.

12. European Convention on Human Rights

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

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").