EXPLANATORY MEMORANDUM TO

THE PAROLE BOARD (AMENDMENT) RULES 2024

2024 No. 1011

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 Lord Timpson, Minister of State at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Kevin Breame at the Ministry of Justice. Telephone: 07980919422 or 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 the implementation of legislative changes in the Victims and Prisoners Act 2024, 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. This Instrument brings into effect changes which are necessary to reflect provisions in the Victims and Prisoners Act 2024, changes in policy, and to improve the effective operation of the parole process. The changes are:

5.2 **Rule 4: Delegation and appointment of functions to members of staff**. Rule 4(3) has been amended so that the Parole Board chair may additionally delegate the following functions to the Board's members of staff:

- Revoke and vary substantive directions made under Rule 6.
- Make directions under Rule 6, allowing Parole Board staff members to:
- Add and remove witnesses.
- Direct the production of information or remove a requirement to produce it.
- Initiate a case management conference.
- Change deadlines under Rule 9.
- Adjourn or defer hearings under Rule 6(11).
- Produce a summary under Rule 27(1).

5.3 This amendment will free up Parole Board members' capacity by confirming via the Rules that appropriate tasks may be undertaken by the Parole Board Secretariat staff. We estimate that being able to delegate these tasks to officials has the capacity to make significant savings. These changes are estimated to save approx. £450,000 per annum, which could allow for approx. 200 additional parole hearings per annum. Delegating these case management functions will save the equivalent of 21 full time Board Members' time over the course of a year. This will support the Parole Board to reduce its listing queues, which in turn will contribute to easing of pressure on prison capacity. It will also speed up parole reviews for prisoners in the affected cases.

5.4 **Rule 7: Case management conferences**. Rule 7, and the rest of the Parole Board Rules have been amended to remove references to 'directions hearings' in favour of 'case management conferences'. In the past, there has been some confusion surrounding the naming protocol, and experience suggests that directions hearings and case management conferences essentially amount to the same thing.

5.5 **Rule 14: Observers**. Rule 14 has been amended to set one deadline, to no later than 8 weeks before the hearing, for all individuals who apply to observe hearings. Previously, Rule 14 provided for different deadlines for applications from the parties (12 weeks) compared to observers approved by the Chair (3 weeks). Setting the same deadline for all observers provides more simplicity and will support the intention that victims should be able to apply to observe hearings.

5.6 **Rule 20: Procedure after a provisional decision on the papers**. Rule 20 has been amended to stipulate that a prisoner who has received a decision not to release following a review of the papers under rule 19(1)(b) must serve the application for an oral hearing within 28 days of the decision being issued. The previous rule referred to the date of receipt of the decision or advice, which is not a fixed date and sets the deadline at a point which can only be ascertained on the facts of each case. The amendment will enable consequential dates to be calculated from the date of issue and prevent people seeking extra days due to slow delivery.

5.7 **Rule 23: Notification by prisoner**. Rule 23 sets out a requirement for the prisoner to notify the parties if they do not want an oral hearing or will not be attending an oral hearing that has already been listed. Rule 23 has been amended to provide more detail on the circumstances in which an oral hearing may be held in the absence of a prisoner, so the Parole Board are empowered to hold hearings if they able to do so rather than have to resort to an otherwise unnecessary adjournment or deferral. These are:

- In the absence of an unrepresented prisoner when he does not wish to attend.

- In the absence of a represented prisoner when he does not wish to attend but where his representative is attending.
- In the absence of a represented prisoner when he does not wish to attend and a representative who does not wish to attend.
- In the absence of a prisoner who has been excluded for disruption in all the above listed scenarios.

5.8 **Rule 27: Summaries and disclosure**. Rule 27 (8) sets out for the purpose of the Rule, the origins of the Victim Contact Scheme, and it previously referenced the Domestic Violence, Crime and Victims Act 2004. Rule 27 has been updated to reflect the legislative basis for a new Victims Code, as per Section 2 of the Victims and Prisoners Act 2024.

5.9 **Rule 28: Reconsideration of decisions**. Rule 28 previously stated that an application for reconsideration must be made no later than 21 days after the decision "is provided to the parties." Rule 28 has been amended to state that an application for reconsideration must be made no later than 21 days after the decision is issued to the parties. This amendment allows for greater clarity around when the application period begins and ends.

5.10 **Rule 29: Error of procedure**. Rule 29 provides a power for the panel chair to take any action they deem appropriate in response to an identified error of procedure. A new clause has been added to Rule 29 to stipulate that it does not apply once a decision has become final. The setting aside provisions under Rule 28A enable the Parole Board to withdraw a final decision in limited circumstances on application from the parties or at the initiation of the Chair of the Board. This should be the only recourse in the rules to challenge or otherwise amend a final decision. This amendment will prevent requests to apply Rule 29 to final decisions and thereby circumventing the limitations imposed by Rule 28A.

5.11 **Rule 30: Slip Rule**. Rule 30 stipulates that the Board may correct an accidental slip or omission in a decision and that a party may apply for a correction without notice. Previously, there was no time limit for such changes. Rule 30 has been amended to add a time limit to the slip rule, so that it can only be used within 12 weeks of the date of a final decision. This amendment limits the time the Parole Board has to correct any errors in a decision. This change will ensure that decisions are completed and signed off with minimal delay.

5.12 **Rule 31: Imprisonment for Public Protection (IPP) and Detention for Public Protection (DPP) Licence Terminations**. The Victims and Prisoners Act 2024 makes changes to the termination of IPP and DPP licences. Notably, the Act reduces the qualifying period for the Parole Board to consider terminating an IPP licence from ten years after first release from prison to three years and for a DPP licence (for offenders convicted when under 18) to two years. It also introduces a provision for the licence to be automatically terminated two years after the relevant qualifying period, in cases where it has not been terminated by the Parole Board and the offender has not been recalled to prison in those two years. These changes have been reflected in the Parole Board Rules.

- References to section 31 of the Crime (Sentences) Act 1997 Act have been replaced with references to the 2024 Act. R31(6) has been amended to reflect the new provisions in the primary legislation, which require the Parole Board to terminate the licence unless the test is met. The options open to the Parole Board have been amended to be either to terminate the licence, or to dismiss the

reference. If the Parole Board dismisses the reference, they may amend the licence conditions at the same time.

- R31(6A) has been amended to reflect the 2024 Act, which specifies that where a referral is made for a recalled prisoner who is in custody, the Parole Board must only consider the termination where they have directed re-release on licence following an oral hearing or a paper decision.
- R31(7(a)) and (b)) have been amended to state that the decision in respect of IPP licence termination should be sent by the Parole Board to the offender and Secretary of State within 14 days.

5.13 R31(7(a)) has been amended to reflect the changes made to R31(6) and R31(6A), to ensure that any decision to amend licence conditions of an IPP prisoner made in the context of considering licence termination can be subject to reconsideration.

5.14 All rules are of general application, except where there is a specific exception.

What was the previous policy, how is this different?

5.15 The Parole Board Rules 2019 as it is currently set out is not sufficiently updated to reflect the changes in the Victims and Prisoners Act 2024. The consequence of not proceeding with this SI would be that these measures in the Victims and Prisoners Act 2024 would not be able to be exercised by the Board.

6. Legislative and Legal Context

How has the law changed?

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. The current rules were introduced in July 2019 and amended in 2022 and 2023.

6.2 As described in Section 5, this instrument amends various existing Rules to either improve the operation or the parole process or, in the case of Rule 31, to give effect to changes in primary legislation.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 During the development of these amendments to the Parole Board Rules, the Ministry of Justice held workshops with the Parole Board and the Probation Service to seek their views. The workshops were used to discuss operational challenges and to identify any necessary amendments to the Rules. The results of those workshops and discussions have informed the content of this instrument. Drafts of the instrument were shared with the Parole Board for their comment and feedback.

7.2 The Government has not completed a formal public consultation on this Statutory Instrument, as it is not common practice to conduct a public consultation for minor changes made to secondary legislation of this nature.

7.3 Regarding specifically Rule 14, the Ministry of Justice held a test phase of victim-observed Parole Board hearings. During the test phase, the Ministry of Justice

consulted widely with victims' rights groups, victims of crime, and frontline Probation Service Victim Liaison Officers, to inform the wider policy, and the development of Rule 14. These discussions served to help identify what was a realistic and workable timeframe for observer applications to made and processed without compromising the overall conduct of the parole review.

7.4 The Ministry of Justice (MoJ) and His Majesty's Prison and Probation Service (HMPPS) have regularly engaged with key stakeholders on the changes to the IPP licence via an External Stakeholder Challenge Group. Through this group, representatives of independent bodies and organisations were informed of the amendments relating to the sentence and given the space to ask questions and for further information. The MoJ also engaged regularly with the Prison Reform Trust throughout the development of the provisions. Overall, the responses were positive to the amendments, with only some concerns raised about the removal of annual Parole Board reviews of licence termination.

Furthermore, the Justice Select Committee's report on IPP sentences, published on 28 September 2022, followed a year-long inquiry. Organisations and individuals with an interest were invited to submit their views in writing for the Committee's consideration. One of the JSC's recommendations was to reduce the qualifying period from 10 years to five, which was the basis for the changes the previous Government subsequently made to the qualifying period through the Victims and Prisoners Act 2024.

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 incorporates the changes brought forward by this Statutory Instrument.

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 it refers to secondary legislation which will not meet the impact threshold of £5 million per year required for a full Impact Assessment.

9.2 The financial implications of this instrument were modelled using existing published data, internal MI and a set of assumptions. This model suggests that the estimated saving from using Member Assistants or other staff to cover work currently done by panel Chairs means that the Members could instead conduct an additional c.200 oral hearings per year. Any additional costs will be met from existing budgets.

9.3 Based on the hearing completion rate of 80% (2023/24) and the subsequent approximate release rate (53%, 2023/24) we estimate an additional c.80 releases per year. If each release would have otherwise spent up to a year in custody, the instrument would save up to £4.3m in prison place savings.

Impact on businesses, charities and voluntary bodies

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

9.5 The legislation does not impact small or micro businesses.

9.6 There is no, or no significant, impact on the public sector because the legislation is amending existing rules and processes rather than introducing new polices. 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 approach to monitoring this legislation is through regular stakeholder meetings. 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 increased scrutiny of the parole system, including the impact of the Parole Board (Amendment) Rules 2024

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to 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").