EXPLANATORY MEMORANDUM TO

THE PAROLE BOARD (AMENDMENT) RULES 2025

2025 No. 1231

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 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 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 SI also makes a number of other rule changes to improve process and procedure which are detailed below. All rules are of general application, except where there is a specific exception.

New and amended Parole Board Rules

5.2 **Rule 2: Interpretation.** Rule 2 defines key terms used throughout the Parole Board Rules. It has been amended to include a definition of 'victim' which is needed to support the amendment to Rule 14 that introduces a presumption that victims will be permitted to observe parole hearings.

5.3 **Rule 4: Delegation and appointment of functions to members of staff**. The ability to delegate certain judicial functions from Parole Board members to Secretariat staff was added to the Rules in 2024. The Parole Board reported that this change has been successful in allowing them more flexibility to manage their work in a more efficient way. The Board has identified three more functions that could be delegated and asked that these additional functions are added to the list. 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:

- Determine whether third parties may read the victim personal statement on behalf of the victim.
- Decide on applications for observers, including those submitted by victims.
- Secretariat staff may convene and hold case conferences with witnesses and parties to resolve outstanding matters pertaining to any other functions delegated under Rule 4(3). This will speed up decision-making by enabling any issues to be discussed and agreed rather than having to rely on written communications.

5.4 **Rule 6: Case management and directions.** Rule 6 has been amended to allow the Parole Board to withhold certain information during proceedings, unless Rule 17 applies. There are occasions where potentially sensitive evidence is known to the prisoner but could cause harm if it was shared more widely. This amendment will allow panels to use Rule 6 to direct that such evidence is managed appropriately, including being withheld from other hearing attendees. Until now, Rule 17 has been used for this purpose, however Rule 17 is concerned with withholding information from the prisoner and contain elements, such as allowing representations and appeals, which we do not consider necessary in relation to withholding information from hearing attendees or other witnesses because they are not parties to the process. This change will ensure that sensitive material can be managed appropriately, while still respecting the safeguards set out elsewhere in the rules. The update supports panels in handling complex cases more effectively, especially where disclosure of information could affect fairness or safety.

5.5 **Rule 14: Observers**. Rule 14 has been amended to introduce a time limit of 14 days for representations to be made to the Parole Board for all observer applications. Previously, the rules only contained a time limit for representations in response to observer applications made by the parties but there was no equivalent time limit for observers who had applied directly to the Board. Introducing a uniform timeframe for all applications ensures consistency by requiring parties to submit representations within the same window, avoiding delays and ensuring timely decisions

5.6 **New Rule 14(4D): Victim presumption.** Rule 14 has been amended to introduce a presumption in favour of allowing victims to observe parole hearings. This supports the government's policy, introduced in April 2025, that victims can apply to observe private parole hearings. It is still for the Parole Board to make a decision in each case whether an observation is appropriate but the presumption emphasises the government's desire that victims should be permitted to observe where possible and

the Board has agreed the wording in the instrument. The ability to observe a hearing was intended to empower victims and improve their understanding by giving them access to parole hearings and helping them to feel more included in the process

5.7 **Rule 17: Withholding information or reports.** Rule 17 has been amended in several ways to address gaps in the existing rule and improve overall efficiency of applications and decision-making:

i) Amendments to sub-paragraph 4 enable panel chairs to make directions and hold case conferences before making the decision on a Rule 17 application. The ability to use case conferences is intended to reduce the current reliance on written communication thereby allowing issues to be resolved in a more efficient way. This amendment also allows the appointment of a Special Advocate on receipt of an application involving closed material. The previous version of the rule only allowed the Special Advocate to be appointed after the panel had agreed to withhold the information. This change follows the practice in the Civil Procedure Rules and was support by the Parole Board and owners of closed material because it means that the Special Advocate will be able to contribute to the decision on whether information should be withheld and how it should be appropriately summarised for sharing with the prisoner.

ii) New sub-paragraphs 4A and 4B have introduced a deeming provision that allows additional sensitive documents to be considered as part of ongoing applications rather than requiring a separate application per document. Reducing the number of separate individual applications required (and the consequent representations, decisions and appeals that each one entails) will save time in complex cases. New applications will be required for information submitted after an application has been decided except new material submitted as part of the appeal stage. In those instances, withholding the new material will be determined as part of the appeal.

iii) Amendments to sub-paragraph 5 give an updated and more accurate description of the potential outcomes of a Rule 17 application,

iv) New sub-paragraph 7A requires a new undertaking if a prisoner appoints a new legal representative. This prevents potential scenarios where sensitive material may have been disclosed to individuals who not given the necessary undertaking and who then may have shared the information with others. New sub-paragraphs 14E and F provide a way in which undertakings can be re-considered or withdrawn at a later date. Until now, the rules have not contained any mechanism for an undertaking to be reviewed at a later date. The sensitivity of information may change over time and this provision was requested by the Parole Board to provide a framework for any requests of that nature. Neither of these issues were covered by the rules until now

v) New paragraphs 17A to C set out the role and responsibilities of a Special Advocate when appointed. These issues were not covered at all in the previous rules but an increased number of cases requiring a Special Advocate has brought into focus the need to provide clearer guidance for both panels and parties, helping everyone understand how sensitive material will be managed and how the prisoner's representation will be protected throughout the process. These changes are modelled on the Civil Procedure Rules, which provide a well-established legal framework for managing closed material procedures. This alignment ensures that the Parole Board's approach to handling sensitive information is consistent with broader legal standards and

reflects best practice. References to Special Advocates have also been added at various other sub-paragraphs to in order to clarify how the rules are applied in cases where one has been appointed.

vi) The amendment to Rule 17 removes all provisions for third-party involvement, so applications to withhold material can only be made by the Secretary of State. Third party owners of information, such as the police, provide their information to Public Protection Casework Section (PPCS) in HMPPS who assess the material and will submit the Rule 17 application if applicable. This change means all applications continue to be managed centrally by PPCS, which provides a single clear process and consistency of approach. The option for third-party applications was introduced in the 2019 Rules, however no third parties were ever authorised to make applications and operational improvements by PPCS in the management of Rule 17 applications means we have now decided that it is preferable for the applications to be managed centrally by them as described above. Third party applications would risk inconsistent approaches, increased bureaucracy and greater risk of breakdowns in communication between PPCS, the Parole Board and the third parties. As the provisions have never been used, removing them does not impact application handling or negatively affect any of the third parties.

5.8 **Rule 19: Consideration on the papers**. Rule 19 is amended to allow more categories of cases to be decided on the papers unless it is necessary in the interests of justice to hold an oral hearing. The categories include Standard Determinate Sentence recalls, cases where prisoners are facing further charges and where the closeness of the prisoner's automatic release date makes it impractical to hold a hearing.

5.9 It does not preclude hearings in any of these circumstances and panel chairs will still have to make a decision that takes into account the circumstances of the individual case. This change is being made to reduce oral hearings being directed where they may not otherwise be necessary, thus improving operational efficiency and enabling the Parole Board to focus oral hearing capacity on more complex or sensitive cases. The intention behind this amendment is to ensure that the Board's resources are directed towards cases where oral scrutiny is most needed, while allowing straightforward or time-sensitive cases to be resolved more quickly.

5.10 While the change establishes a default position in favour of paper decisions in certain circumstances, it retains a safeguard. This approach aligns with the R (Osborn) v Parole Board [2013] UKSC 61 judgement, which confirmed that the right to an oral hearing is grounded in common law fairness and must be considered whenever there is a risk that a paper decision could lead to an unjust outcome.

5.11 **Rule 27: Redacted Decision Letters**. Amendments have been made removing the word "summary" in favour of "the reasons for a decision". The ability to provide a decision summary has existed since 2018 and this change has been introduced to enable the Parole Board Chair to provide a redacted decision letter instead of a decision summary. Decision summaries have proven popular but redacted decision letters will further increase transparency and understanding of Parole Board decisions by providing more detailed reasons and explanation than summaries do. This is currently being piloted by the Parole Board and is intentionally draft in a way that allows the flexibility for the Board to decide whether to provide a summary or a redacted letter. It will therefore support the gradual transition away from decision summaries if that is what the Parole Board decides to do.

5.12 **Rule 28A: Setting aside final decisions**. Rule 28A has been amended to remove 'error of law' as a ground for setting aside final decisions. This change clarifies the intended purpose of Rule 28A as a mechanism for reopening decisions in light of new or previously unavailable information that emerges after a release direction has been made. Legal errors can be the basis for an application through the reconsideration process in eligible cases. It was added to the criteria for reconsideration so that any errors of law could be addressed immediately rather than having to wait for the 21-day reconsideration period to end before an application for setting aside could be made. However, the presence of "error of law" in the criteria for both reconsideration and setting aside has caused unintended confusion over the purpose of two processes.

5.13 The government is satisfied that for release decisions, any errors of law will be sufficiently obvious that they will be identified within 21 days of the decision and therefore can be the subject of a reconsideration application. Records show that 'error of law' has never been relied upon to request the setting aside of a release decision but the government will still have the option of seeking judicial review in the unlikely event that an error is not identified quickly enough.

5.14 For no-release decisions, eligible cases will still be able to rely on reconsideration on the grounds of error of law. In practice, the duplication of the criteria has meant that set aside applications for errors of law have been used as an alternative to reconsideration in non-eligible cases, but this was not the intention of the original rule. The rule change means that in the rare instances where an error of law occurs in cases not eligible for reconsideration then affected prisoners will need to seek judicial review of the decision instead of making a set aside application.

5.15 **Part 5, Rules 32(1) and 32(2): Referral of release decisions to the High Court.** Part 5 introduces the new procedural framework for the new parole referral power, as required by sections 61 and 62 of the Victims and Prisoners Act 2024. The power allows the Secretary of State to direct the Parole Board to refer certain parole cases to the High Court for a fresh release decision, following a final release decision made by the Board. The High Court will decide whether the release test has been satisfied: this is not a review of the Board's initial decision. Rule 32(1) makes it clear that the referral is not discretionary; once the direction is given by the Secretary of State, the Board is obliged to refer the case to the High Court. The referral must follow the procedure set out in the Civil Procedure Rules. Rule 32(2) imposes a strict timeframe that the Parole Board must complete the referral within two working days of receiving the Secretary of State's direction, to maintain efficiency and minimising delay, reinforcing confidence in the system.

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.

6.2 The Parole Board Rules 2019 as they are currently set out require updating to reflect the changes in the Victims and Prisoners Act 2024 that will enable the Secretary of State to direct the Parole Board to refer certain parole decisions to the High Court. The Secretary of State may only refer a case if he considers that the release of the offender would likely undermine public confidence in the parole system and that the High Court might find that the release test has not been met.

6.3 The legislation requires that the Parole Board must initiate the referral of a case to the High Court on direction of the Secretary of State, therefore the consequence of not proceeding with this SI would be that the Board would not be able to perform this function in accordance with the measures in the Victims and Prisoners Act 2024.

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 consulted regularly via e-mail and in meetings with HMPPS and the Parole Board to seek their views on proposed rule changes and invited them to propose their own changes informed by their operational expertise. A number of the rule changes, including Rules 4, 14, 27 and 28A, have been made in response to requests made by the Parole Board and were subsequently agreed with HMPPS. This dialogue is aimed to ensure that at the point of commencement, both agencies share a joint understanding of the purpose and intent of the rules.

7.2 Proposals for the changes to Rule 17 were also shared with police, security services and Special Advocates as they have the ownership and expertise in collecting, handling and processing the most sensitive material that may be used as evidence in the parole process. Different proposals for how to improve the clarity, timeliness and efficiency of the non-disclosure procedure under Rule 17 were considered and views invited. The conclusion was that the Rule should replicate the model for closed material in the Civil Procedure Rules and the agencies and partners agreed with that approach.

7.3 The Ministry of Justice consulted with the Parole Board and HMPPS on the new Part 5 rules for the parole referral power to ensure the role of the Parole Board in making the referral to the High Court is clear.

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 The financial implications of this instrument were modelled using existing published data, internal MI and a set of assumptions. The modelling suggests annual costs in 2026/27 of c.£470k due to victim observation, c.£80k due to redacted decisions and c.£34k due to High Court referral. These costs primarily relate to staffing resources.

9.2 Increasing the number of decisions on papers is expected to free up c.450 oral hearings annually, saving c.500k or allowing for a further c.450 Oral Hearings a year to help meet demand. This could lead to some prison place savings; however, this potential benefit has not been costed.

9.3 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

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

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

9.6 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, including the impact of the Parole Board (Amendment) Rules 2025.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Civil Procedure (Amendment No. 3) Rules are being laid alongside this SI to provide rules in relation to referral power cases in the High Court. That SI, and Part 5 of this SI, will commence on 31 December 2025.

12. European Convention on Human Rights

12.1 Baroness Levitt KC, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Parole Board Rules (Amendment) Rules 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.