EXPLANATORY MEMORANDUM TO

THE PAROLE BOARD (AMENDMENT) RULES 2026

2026 No. 129

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 changes to Rule 19 and Rule 20, regarding how certain decisions may be taken on the papers and the circumstances in which an oral hearing is required.

Amended Parole Board Rules

5.2 **Rule 19: Consideration on the papers**. Rule 19 is amended to allow certain categories of cases to be decided on the papers unless there are exceptional circumstances which make it necessary to hold an oral hearing.

5.3 The rule was previously amended by the Parole Board (Amendment) Rules 2025 to allow more categories of cases to be decided on papers. However, that amendment went further than the original policy intention. On reflection and taking account of the comments of the Joint Committee on Statutory Instrument's Forty-Sixth Report of Session for 2024-2026[1], a refinement has been made in order to focus the rule more tightly on the types of cases where directing an oral hearing is most likely to be impractical or cause a long delay before the case can be concluded.

5.4 This instrument, therefore, amends Rule 19(1ZA) to remove its previous application to all recalled fixed-term prisoners; it will now only apply to the following categories: any prisoners who are under investigation for further offences or are facing unresolved criminal charges for matters relevant to their risk, or are fixed term prisoners approaching their automatic release date such that convening and concluding an oral hearing would not be practicable. In these circumstances, cases may be concluded on the papers unless there are exceptional circumstances requiring an oral hearing.

5.5 We are mindful of the interaction between this instrument and the decision in R (Osborn) v Parole Board [2013] UKSC 61[2] which established 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.

5.6 The change to Rule 19(1ZA) sets a presumption for a paper decision in a limited and targeted set of cases. We believe this is justified. The rule applies to a narrow range of cases in which an oral hearing is already, in practice, unlikely to take place (in the case of prisoners who will reach their automatic release date before the hearing can take place), or be able to reach a conclusion if it does take place (in the case of prisoners subject to further investigation or charges). In relation to new charges or investigations, the presumption only applies where the further changes or matters under investigation are relevant to the prisoner's risk. Those are cases where an oral hearing, if directed, is unlikely to be able to reach a determination on the statutory release test until the outcome of those further criminal matters.

5.7 Currently, following the Osborn judgment, the Board will direct an oral hearing in these circumstances, rather than conclude cases on the papers. This means that, where offenders are under investigation or facing further charges, what happens in practice is that the cases are repeatedly adjourned or deferred until the investigations/charges are resolved. That requires oversight by the Parole Board and means written evidence prepared for the review by the Probation Service and others becomes out-of-date and must be updated. This is not an effective use of resources and long delays before a decision can be reached is not in the best interests of the prisoner or victims. Cases will be re-referred to the Parole Board promptly once any outstanding criminal matters have been concluded.

5.8 In our view, enabling the Parole Board to conclude these cases on papers without an oral hearing, unless there are exceptional circumstances, is not an unjust outcome for the prisoners concerned.

[1] https://committees.parliament.uk/publications/51345/documents/285017/default/
[2] https://www.bailii.org/uk/cases/UKSC/2013/61.html

5.9 Prisoners will still receive a full consideration of their case and the "exceptional circumstances" safeguard enables an oral hearing where that is required in the particular circumstances.

5.10 The 2025 changes to Rule 19 which we are updating have only been in force for a short time and it is difficult to assess their impact without examining the details of every case that the Parole Board has determined since the 2025 amendments commenced on 16 December 2025. In each case, the Board still had the ability to direct a hearing, albeit in exceptional circumstance. Even on review, we could only speculate whether any individual not granted a hearing under the old rules would also not get one if assessed again under the amended rules.

5.11 **Rule 20: Procedure after a provisional decision on the papers**. Rule 20 is amended to provide that where a decision is made under Rule 19(1ZA) not to hold an oral hearing, any subsequent application under Rule 20 must be determined by applying the same presumption in Rule19(1ZA). This amendment is intended to provide clarity that decisions on whether to hold an oral hearing on a Rule 20 application should be made consistently with such decisions made under Rule 19.

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 The Parole Board identified concerns with the Parole Board (Amendment) Rules 2025 and the unintended consequences of the terminology used, which meant Rule 19(1ZA) applied more widely than intended. We have engaged closely with the Board to revise Rule 19(1ZA) and they were content with the final wording in this instrument. We also discussed the explanation of its purpose and impact to assist with the drafting of this Explanatory Memorandum.

7.2 In addition, the Association of Prison Lawyers were provided with an early copy of the draft instrument and given the opportunity to comment on the proposed changes. In their comments on the draft instrument they raised similar concerns to the JCSI regarding compatibility with Osborn and we believe our approach to further narrow the rule including in particular in relation to cases involving further charge or investigation only to matters relevant to risk will go some way to mitigate the concerns raised. Whilst it is understandable that prisoners' legal representatives want to see no restrictions on oral hearings, we believe there are good policy justifications for setting a presumption in this limited way.

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 estimate that the measures in this instrument will save the equivalent of c.350 to c. 650 oral hearings annually at steady state. This will not generate any monetary savings for the Parole Board or others because the vacated oral hearing slots will be taken up by other cases awaiting a hearing. Approximately the same number of hearings will still take place annually but it is expected to enable the Board to further reduce the waiting time for an oral hearing where one is directed.

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, including the impact of the Parole Board (Amendment) Rules 2026.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Joint Committee on Statutory Instruments reported the Parole Board (Amendment) Rules 2025 for defective drafting, on the basis that the requirement for "exceptional circumstances" to justify an oral hearing did not clearly align with the stated intention of reflecting the approach in R (Osborn) v Parole Board [2013] UKSC 61. We have taken account of the Committee's comments. This instrument refines the scope of Rule 19(1ZA) and limits its application to a narrowly defined set of cases, setting out more clearly the circumstances in which a paper decision will normally be made. We have explained above how we view these changes in light of the established caselaw and why we believe they are necessary and justified.

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