**EXPLANATORY MEMORANDUM TO**

**THE PAROLE COMMISSIONERS' (AMENDMENT) RULES (NORTHERN IRELAND) 2022 No. 65**

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Article 100(5) of, and paragraph 4 of Schedule 4 to the Criminal Justice (Northern Ireland) Order 2008 and is subject to the negative resolution procedure.

## 2. Purpose

2.1 The Statutory Rule amends Rule 22A of The Parole Commissioner's Rules (Northern Ireland) 2009. Rule 22A enables registered victims or other persons to make a request for a summary of the reasons for a final direction of a single Commissioner or of a decision of a panel made in oral proceedings to be produced and disclosed, unless there are exceptional circumstances why a summary should not be produced.

2.2 The purpose of the amendment is to provide for the Chief Commissioner to appoint a Commissioner to consider the request for a summary; to provide for the appointed commissioner to produce a summary unless the appointed Commissioner decides there are exceptional circumstances why a summary should not be produced; to provide for an appeal mechanism against an appointed Commissioner's decision not to produce a summary; to prohibit the disclosure in a summary of the names of any persons concerned in the proceedings (other than the parties); and to prohibit the disclosure in a summary of other information about the proceedings except insofar as the appointed Commissioner directs."

## 3. Background

3.1 In 2018, a number of parties legally challenged the decision of the Parole Board of England and Wales to release an individual from custody - DSD And NBV & Ors R (On the Application Of) v [2018] EWHC 694 (Admin) (28 March 2018). One key element of the challenge related to the Rules in force at the time which prevented the disclosure of information relating to proceedings of the Parole Board.

3.2 A key factor was the fundamental right of access to the court e.g. the ability for a victim to challenge a release decision by bringing judicial review proceedings. The Court accepted that if the decision and Parole proceedings were entirely private, then the option of judicial review was effectively barred. In short, the court held that there is no objective necessity for a rule which stifles the provision of all information relating to proceedings of the Parole Board, regardless of the justified public interest in any particular set of proceedings and of the fact that not all information needs to be safeguarded. Accordingly, the Ministry of Justice amended Rule 25 of the Parole Board Rules 2016 on 22 May 2018 to remove the blanket prohibition on the disclosure of information about Parole Review proceedings. An equivalent provision was subsequently provided for at Rule 27 of the Parole Board Rules 2019 (the 2019 Rules).

3.3 The equivalent rule to the original Rule 25 of the 2016 Rules in Northern Ireland is Rule 22 of The Parole Commissioner's Rules (Northern Ireland) 2009.

## 4. Consultation

4.1 The Department consulted extensively with the Parole Commissioners Northern Ireland regarding this further amendment which provides clarity of interpretation in relation to how PCNI operationally gives effect to producing a summary. The Department has also ensured representatives of the Victim Information Schemes have been kept appraised.

## 5. Equality Impact

5.1 Consideration was given to compliance with section 75 of the Northern Ireland Act 1998. As the amendment will apply equally to all registered victims and any other persons, the Department concluded that this matter will not have a differential impact on any of the section 75 categories. On that basis, the measure was screened out.

## 6. Regulatory Impact

6.1 The Department considered that the amendment has potential to impact on data protection principles however it will be a matter for PCNI to ensure access to decisions does not unlawfully interfere with these principles. There will be no impact on costs to business, statutory or voluntary sector.

## 7. Financial Implications

7.1 The primary purpose of the amendment is to provide for the Chief Commissioner to appoint a Commissioner to consider the request which will ensure arrangements for production of a summary represent value for money. The

addition of an appeal mechanism against a refusal of production of a summary may also avert the potential for an application proceeding to judicial review.

## 8. Section 24 of the Northern Ireland Act 1998

8.1 The proposed legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

## 9. EU Implications

9.1 Not applicable.

## 10. Parity or Replicatory Measure

10.1 This measure does not replicate, nor is there a requirement to maintain parity with, legislation in other administrations.

## 11. Additional Information

11.1 Not applicable.