

**EXPLANATORY MEMORANDUM TO
THE PAROLE BOARD RULES 2011**

2011 No. 2947

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This statutory instrument contains procedural rules for the Parole Board. The rules apply when a prisoner's case is referred to the Parole Board by the Secretary of State.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This instrument replaces the Parole Board Rules 2004. The Parole Board Rules 2004 were not made by statutory instrument. These rules were amended by the Parole Board (Amendment) Rules 2009 which were made by statutory instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Parole Board is an independent body that assesses prisoners to decide whether they can be safely released into the community. Where a prisoner has rights under article 5 of the European Convention of Human Rights (right to liberty and security) the Parole Board recognises the need for prisoners to be afforded procedural rights.

7.2 The number of oral hearings the Parole Board is required to hold has increased following the introduction in April 2005 of the indeterminate public protection sentence (pursuant to the Criminal Justice Act 2003), in which the courts are required to set a minimum tariff that has to be served at which point the prisoner must be considered for parole. In 2000/01 the Parole Board held 272 oral hearings compared with 3,732 in 2010/11, an increase of more than 1,270%. The Ministry of Justice is projecting further significant increases in the Parole Board caseload over the next four years. In order to maximise its capacity to deal with the increased volume of cases and to ensure that decisions are taken within the required timescales, more flexible working practices are required.

7.3 Changes have been made to restate, clarify and modernise the Rules. In addition, a number of changes have been made which have a substantive effect. The intention of these changes is to improve the timely and efficient review of cases referred to the Parole Board and to ensure that the Board is provided with all the information it needs to make an informed decision. The key changes to the Rules are summarised below.

7.4 The Parole Board has been given the power to direct that a hearing may take place via video link, telephone conference or any other electronic means. This power has been granted as electronic hearings are expected to increase the Parole Board's disposal rate.

7.5 The Secretary of State may withdraw material the disclosure of which would adversely affect national security, the prevention of disorder or crime, or the health or welfare of any person where a panel rejects an application for that material to be withheld from the prisoner. Where an agency provides sensitive material to the Parole Board it should be confident that the safety of a third party or national security cannot be undermined by the material being disclosed to the prisoner. Allowing the Secretary of State to withdraw sensitive material will ensure the flow of information to the Parole Board which will in turn increase its ability to make informed assessments of risk.

7.6 The Parole Board may direct that information is so sensitive that it cannot be disclosed either to a prisoner or a prisoner's legal representative. In the past when this situation has arisen, the Parole Board has asked the Attorney General to appoint a special advocate. The Parole Board is now being given express power to make such a request.

7.7 The Parole Board has the power to consider any referral from the Secretary of State. The current rules do not expressly cover consideration of release of determinate sentence prisoners who have been recalled to custody or those sentenced under the Criminal Justice Act 1991 and who are eligible to apply for parole at the halfway point of their sentence. Case law provides that that prisoners falling into both of these categories are entitled to request that their cases be considered by the Parole Board. The rules have been extended to clarify that the Parole Board may deal with these cases.

8. Consultation outcome

8.1 There is no statutory obligation to consult on amendments to Parole Board rules. However, an informal consultation exercise seeking views on the proposed changes was conducted with a range of interested parties, including the Parole Board. Responses were received from the Criminal Bar Association, the Association of Prison Lawyers, the Youth Justice Board, the Law Society, the British Psychological Society and one judicial Parole Board Member. A letter of response to the consultation comments can be found at www.justice.gsi.gov.uk.

8.2 There was general support for the use of video-links, but respondents raised a number of concerns about how evidence by video-link was handled and highlighted the need for certain safeguards, such as ensuring that individuals who attend the hearing by means of video-link are clearly identified in advance.

8.3 There was broad support for the proposal to enable the Secretary of State to withdraw material. However, consultees believed that that the Parole Board member who has considered the request for non-disclosure and will have seen the material must play no further part in the prisoner's application. In response, the Rules provide that nobody who has seen withdrawn material may sit on a panel which determines the prisoner's case.

8.4 There was broad support for the proposal that the Parole Board can request that the Attorney General can appoint a special advocate although there was concern that there are too few prison-law specialists within the current panel of special advocates. This concern has been passed on to the Attorney General.

8.5 There was no opposition to the proposal to extend the remit of the Rules to determinate sentence prisoners who have been recalled to custody or those sentenced under the Criminal Justice Act 1991 and who are eligible to apply for parole at the halfway point of their sentence.

9. Guidance

9.1 The Parole Board Rules 2011 can be viewed at www.legislation.gov.uk. National Offender Management Service staff will be advised of the changes to the rules by means of an internal instruction. The respondents to the consultation exercise will also be notified of the commencement of the amended Rules.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that the Parole Board will have greater flexibility in convening hearings in that it can use electronic communication when it is deemed appropriate to do so. It facilitates the Parole Board's access to sensitive information by making it explicit that the Board can use special advocates when necessary and enabling the Secretary of State to withdraw sensitive material if he has concerns that it will be disclosed to the offender or a third party. These changes in turn facilitate timely and informed decisions which in turn enable those prisoners assessed as safe to be released on time.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The use of electronic communication will be piloted in a joint project overseen by the Parole Board and the National Offender Management service. The results of the pilot and the wider application of electronic communication will be reported on in the Parole Board's Annual Report which is published every July.

13. Contact

13.1 Elinor Howard at the Ministry of Justice Tel: 020 3334 3284 or email: Elinor.Howard@justice.gsi.gov.uk can answer any queries regarding the instrument.