



Ministry  
of Justice

# **Reconsideration of Parole Board decisions: creating a new and open system**

Government response to the  
public consultation

February 2019

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Government response to the public consultation

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

February 2019



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## Contents

Executive summary	3
Proposed operating model for the reconsideration mechanism	5
Responses to consultation questions	9
Impact and implementation	22
Annex A – List of organisations who responded	24

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**Reconsideration of Parole Board decisions: creating a new and open system**

Government response to the public consultation

## Executive summary

1. In April 2018, the Government launched a consultation on *Reconsideration of Parole Board Decisions: Creating a New and Open System*. The consultation sought the public's view on the scope, eligibility, criteria and potential impacts of a mechanism that would enable parole decisions to be reconsidered in certain circumstances. This document sets out the Government's response to that consultation and how we intend to now take these proposals forward. We are grateful to all those who took the time to respond.
2. It is important to emphasise that the reconsideration mechanism is part of a wider package of measures that the Government is introducing to make improvements and reforms to the system of parole. We have undertaken a review of all the Parole Board Rules and explored the scope for other changes to the system – particularly with a view to making it more transparent and improving it for victims. Our report on the outcome of that review has also been published today alongside this response.
3. Together, the reviews that the Government has undertaken seek to make the parole system more transparent; will improve the way that victims are communicated with and involved throughout the process; ensure that the parole system is robust and fair; and ensure that it functions as efficiently and effectively as possible for all concerned.
4. At present, the only way to challenge parole decisions is through the courts by seeking a judicial review. While this is an effective form of scrutiny, it can be a costly, complex, time-consuming and intimidating process, especially for victims of crime. The *Worboys* case was unusual in many ways but it shone a light on the need to have a more accessible way to review parole decisions in those rare cases where the decision may be flawed. The majority of consultation respondents welcomed the possibility of having an alternative way to review decisions and the Government has decided that we should proceed to make provision in the Parole Board Rules to implement a new reconsideration mechanism.
5. Having taken account of the views expressed in response to the consultation paper, this document now sets out our plans for how the mechanism will operate. Since the consultation closed at the end of July 2018, detailed work has been undertaken between the Ministry of Justice, Her Majesty's Prison & Probation Service (HMPPS) and the Parole Board for England and Wales to carefully construct a model for how reconsideration might best be delivered. In developing this model, we have sought to create an effective mechanism which provides the opportunity to challenge decisions which appear to be seriously flawed but is also proportionate and workable and does not create unnecessary delays or uncertainty in the system for the vast majority of cases for which reconsideration will not be needed.
6. It has also been important to balance the need to give victims a way to voice their concerns against the legal requirement that prisoners must be released once the Parole Board has directed it, having assessed that they no longer need to be detained for the protection of the public. We believe that the model set out in this document strikes the right balance.

7. Victim Liaison Officers (VLOs) will play a key role in providing information to victims about the reconsideration mechanism and how it works. We will ensure VLOs are equipped with the training, guidance and other tools they need for this. We propose that victims who believe a decision is flawed and should be reconsidered will put their case to the Secretary of State – via the Public Protection Casework Section (PPCS) in HMPPS – PPCS are best placed to examine the details of the case and assess whether an application should be made to the Parole Board.
8. Formal applications to the Board will be made by either the Secretary of State or the prisoner, as the parties to the parole proceedings. PPCS, on behalf of the Secretary of State, will decide whether there is a case to submit an application following representations from the victim and having checked the decision for indications that it might meet the criteria for reconsideration. Prisoners may also apply for reconsideration – if they believe a decision not to release them was flawed – and those applications will go to the Parole Board directly.
9. We have decided there will be an ‘application window’ of up to 21 calendar days from the date that the outcome of the parole hearing is notified to the parties. Prisoners will not normally be released during that window unless it is confirmed that no reconsideration application is to be submitted and the arrangements for release can go ahead.
10. A concern expressed by a number of respondents was the need to ensure that any new mechanism has the resources behind it to support its effective delivery. We have assessed the impact of the proposed model and the resources that will be required to deliver it. This consultation response outlines our estimates of the potential numbers of cases and impacts of the reconsideration mechanism and how we propose this can be delivered.
11. Many respondents agreed that the criteria for reconsideration should set a high threshold – that is, only those cases where the decision is legally flawed to the extent that it might otherwise attract a judicial review. This means that very few cases will meet this threshold and go on to require reconsideration by a new Parole Board panel. There will, of course, be more applications submitted in the hope the case will be reconsidered even if it is subsequently determined that they do not meet the criteria. We will ensure that the resources are in place in HMPPS and in the Parole Board to manage and respond fully to all those applications, and provide full reasons for the decisions taken, no-matter what the outcome is.
12. The mechanism will be introduced by adding new provisions in the Parole Board Rules. This requires a Statutory Instrument to be laid before Parliament which we expect to take place in the coming months. Between now and then, we will undertake the work required to prepare for implementation – including the development of new paperwork, guidance and training and to put the necessary resources in place.
13. As explained above, the implementation of the reconsideration mechanism will also take place along with other reforms and changes proposed following our Review of the Parole Board Rules.



## Proposed operating model for the reconsideration mechanism

14. This section describes how some of the key aspects of the reconsideration mechanism will work, including an overview of the process and some of the timescales that will apply. Explanations of the reasoning behind these decisions can be found in the next section which deals with the responses to the specific questions posed in the consultation document.

### Which cases will reconsideration apply to?

15. The reconsideration mechanism will apply to decisions made in respect of the release of **indeterminate sentenced prisoners (ISPs)** and prisoners serving **Extended Determinate Sentences (EDS)**. This includes reviews of those who have been recalled to prison for breaching their licence conditions who are being considered by the Board for re-release.
16. Decisions made in respect of other determinate sentence prisoners who are being considered for release by the Parole Board (for example, where a determinate sentence prisoner has been recalled for licence breach and is being considered for re-release) are not eligible for reconsideration. 'Pre-tariff' ISPs (those not yet eligible for release but who are being considered for a move to open prison conditions) will also not be in scope for the new process.

### Criteria

17. There will be a high threshold for reconsideration applications to be accepted, along the lines of the **judicial review grounds** (illegality, irrationality and procedural unfairness).
18. Parole decisions are based on an assessment of evidence and the professional judgment of individual panel members. Decisions should not be vulnerable to challenge simply because a party disagrees with the result. To meet the threshold for reconsideration, the decision will need to be legally flawed in some way.

### Who can challenge parole decisions using the reconsideration mechanism?

19. Only the parties to the parole process (i.e. the prisoner and the Secretary of State) will be able formally to apply to the Parole Board for reconsideration but victims will be able to make a case for a decision to be reconsidered. After considering a number of options, we have concluded that **victims submitting their concerns via the Secretary of State** is the best approach.
20. Public Protection Casework Section (PPCS) in Her Majesty's Prison & Probation Service (HMPPS), will administer the reconsideration mechanism on behalf of the Secretary of State. Where a victim has concerns about a parole decision, they will ask PPCS to examine the case and consider the possibility of making an application for reconsideration. PPCS have access to more detailed information than the victim (such as the full parole dossier, the full decision and access to the prison and probation witnesses); and, if necessary, can access legal advice too. PPCS are well placed and have the professional expertise, therefore, to assess whether the decision may be flawed.

21. For these reasons, we concluded this approach was preferable to victims having to make a case directly to the Parole Board, which would involve victims having to obtain and present evidence, for which they may also require legal representation – which would be costly and time consuming. That would not be acceptable or workable – victims should be supported and advised through the process and benefit from the expertise and resources at the disposal of the Secretary of State, rather than left to make a case for reconsideration on their own.
22. In response to victim representations, if the Secretary of State concludes having examined the case that there is insufficient evidence or reason to believe the threshold for reconsideration may have been met, victims will be provided with full reasons for the decision not to proceed with an application to the Parole Board.
23. The Secretary of State may apply for reconsideration without input from a victim. To make sure all cases that might meet the threshold for reconsideration are identified as quickly as possible and referred to the Parole Board, PPCS will be screening every ISP and EDS release decision and looking for signs of a potentially flawed decision that might meet the reconsideration threshold.
24. Prisoners will also be able to use the reconsideration mechanism to challenge parole decisions by applying directly to the Parole Board if they think a decision not to release them was legally flawed. The same high threshold would apply. The Secretary of State will not routinely comment on prisoner applications but any victims who have chosen to receive information under the Victim Contact Scheme will be notified where a prisoner has made an application and of the Parole Board's decision on whether the decision should be reconsidered.

## **Timescales**

25. The reconsideration mechanism needs to be swift and efficient to avoid creating unnecessary delays and uncertainty. It needs to be fair and accessible to victims by providing a reasonable period to consider the outcome and to decide whether to make representations to the Secretary of State seeking reconsideration. It also must be fair to prisoners and respect the legal requirement that once the Parole Board has concluded that the prisoner no longer needs to be held for the protection of the public, he or she must be released without undue delay. Getting this balance right is also about proportionality – given that only a very small number of cases may meet the threshold for reconsideration, it would not be right to unduly delay the release of the vast majority of prisoners for the sake of the few who may go down the reconsideration route.
26. We have concluded that after a release decision is issued there will be **a period of up to 21 calendar days for the Secretary of State or the prisoner to submit their applications for reconsideration to the Parole Board**. The timescale for applying will take public holidays into account. We are also actively considering what degree of flexibility there can be to accommodate out-of-time applications.
27. We believe that an application window of 21 calendar days creates the right balance between providing a fair opportunity for victims to ask the Secretary of State to consider making an application for reconsideration and prisoners' expectation and legal right to be released following a Parole Board determination that they should be released on licence.

28. VLOs will play a key role in making sure that victims are fully informed about the possibility of reconsideration, the criteria and the timescales involved ahead of the release decision being made. This will ensure that victims are prepared in advance and know what to do in the event that they wish to ask the Secretary of State to consider making an application for reconsideration, and how quickly this needs to be done. This information and support will also be important to manage expectations, by making clear that reconsideration is not about challenging a decision the victim may disagree with but only about cases where there appears to have been a significant procedural or legal error in reaching the decision.
29. Prisoners will not be released during the application window. However, preparations for release and putting the necessary arrangements in place will continue during that period as normal. The reconsideration mechanism will only apply to ISP and EDS cases and following a release decision measures need to be put in place to manage them in the community. This may involve, for example, waiting for a bed at a suitable Probation Service Approved Premises. This means that the creation of a 21-calendar day application window should not, in practice, create undue delays or substantially affect how the release process currently works or the time taken for the majority of eligible cases. Release planning will continue as normal during the application window so that the prisoner can be released as soon as possible after the period has expired, unless an application for reconsideration is submitted in which case the release will be put on hold until a decision on the application is made by the Parole Board.
30. We are conscious of the pressures, particularly on victims, that will be created by applying a relatively short application window and we intend to make the process as straightforward as possible. We will work with colleagues in HMPPS to ensure the delivery of effective training and guidance for VLOs so they can provide the best possible information and support to victims. The Parole Board is also working to ensure that decision summaries are made available as quickly as possible so victims can make informed judgements about whether to ask the Secretary of State to consider making an application for reconsideration.

### **Process overview**

31. The exact detail of the operational process of reconsideration may be subject to change as we work with stakeholders on preparations for implementation but the preferred design is as follows:
  - a) Before the hearing the VLO, as part of the explanation of how the parole process works, will provide the victim with information and guidance about the reconsideration mechanism – so they are fully informed and aware of the process and timescales in advance.
  - b) The Parole Board issue the decision letter to the Secretary of State, the Probation Service, the prisoner and their legal representative within 14 calendar days of the oral hearing – and the decision is notified to the victim via the VLO.
  - c) There will be a 21-calendar day period running from the date of issue for the Secretary of State or the prisoner to lodge a reconsideration application with the Parole Board.

- d) During the application window, several actions need to be taken in parallel:
    - The VLO will disclose the hearing result to the victim and discuss the possibility of seeking reconsideration if the victim believes there may have been a fundamental flaw in the process or decision.
    - The Parole Board will prepare and disclose a decision summary if the victim has requested one.
    - PPCS on behalf of the Secretary of State will screen all ISP and EDS release decisions to identify any cases that may meet the criteria for reconsideration.
  - e) We envisage there being guidance and a template for victims to use if they wish to ask the Secretary of State to consider making an application for reconsideration, which will be submitted to PPCS. The victim will be able to submit the request directly themselves or with the support of their VLO.
  - f) Applications for reconsideration must be submitted to the Parole Board by the end of the 21-calendar day window. If no application is submitted then the prisoner must be released as normal once the necessary arrangements for their supervision on licence are in place.
  - g) If the Secretary of State makes an application for reconsideration then the prisoner will have the opportunity to make written representations before the Board make a formal determination and will continue to be detained in the meantime.
  - h) After receipt of the prisoner's representations, the application will be considered by a judicial or accredited member of the Parole Board to decide whether the case should be reconsidered.
  - i) The initial determination will be made on the papers. At this stage the Board may: a) refuse the application; b) decide that the case requires a new oral hearing with either the original panel or a new panel; or c) resolve the application administratively by requiring the panel to produce an amended version of the original decision letter, or where appropriate correcting the error in the decision themselves. Reasons will be provided in all cases – and these will be passed on to the victim via the VLO.
  - j) If the Parole Board Member considering the application directs a new oral hearing then this will follow the same process as all other parole cases and victims will have the opportunity to submit a new or amended Victim Personal Statement (VPS).
32. Prisoners will submit their applications for reconsideration directly to the Parole Board or via their legal representative. The Secretary of State will be notified of the application but will not make any representations in response unless directed to do so by the Parole Board. Subject to the volume of prisoner applications and member capacity, it may be necessary for the Parole Board to operate an administrative sift process so not all prisoner applications may be seen by a judicial or accredited member. Victims who have chosen to receive updates under the Victim Contact Scheme will also be notified if a prisoner applies for reconsideration and the subsequent outcome.

## Responses to consultation questions

33. We received a total of 74 responses to the consultation. A list of organisations that responded are listed at Annex A. Some respondents, including the Parole Board for England & Wales, the Victims' Commissioner and the Prison Reform Trust chose to publish their responses to the consultation on their respective websites.
34. The consultation asked eight specific questions and a summary of the responses is set out below, together with the Government's comments on the issues raised.

### **Q1. Do you agree that decisions where the Parole Board directs a prisoner to be released or prohibits them from being released should be in the scope of the proposed reconsideration mechanism?**

35. Of the 66 respondents who expressed a clear opinion, 59 (89%) agreed that release decisions should be in scope for the proposed reconsideration mechanism. Five of those respondents, including the Parole Board for England & Wales, felt that we should go further and also include Parole Board recommendations for transfer to open conditions in the reconsideration mechanism. Two respondents noted the Parole Board's view but disagreed about including open recommendations.
36. Only seven respondents (11%) disagreed with the question but their reasons were more about the entire concept of reconsideration rather than which decisions should be in scope. Comments included:
- A lack of clarity in the consultation document on how the proposed mechanism will operate;
  - A fear that negative media coverage and public outcry (or the risk of outcry) might unduly influence the Board's decisions;
  - Reconsideration is not necessary because the existing ability to judicially review Parole Board decisions is sufficient;
  - Reforming the Parole Board into a tribunal or providing more resources for the current system should be the priority.
37. Eight respondents either did not answer the question or did not give a clear opinion on which decisions should be in scope for the reconsideration mechanism.

### **Government Response**

38. We were pleased to note that the majority of respondents to the consultation agreed with the conclusion of the *Review of the law, policy and procedure relating to Parole Board decisions* that a reconsideration mechanism was necessary and that release decisions should be in scope for the new process.
39. The Parole Board is responsible for making decisions on the suitability for release on licence for several different types of sentence including indeterminate sentences, parole-eligible determinate sentences (mostly extended sentences imposed on offenders deemed by the courts to be 'dangerous') and certain prisoners who have been recalled to custody. As stated in the previous section of this report, we have

concluded that only decisions considering suitability for release on licence in respect of indeterminate sentences and Extended Determinate Sentences will be in scope for the reconsideration mechanism.

40. There are two main reasons for this: (a) ISP and EDS cases are more likely to generate the type of complex and contentious decisions which would benefit from the option to be reconsidered, and (b) following a release decision in these cases, it typically takes several weeks to make the necessary arrangements before the prisoners can be physically released. Introducing a reconsideration process in these cases will therefore not create a disproportionate impact in delaying release. With other types of parole decisions, such as in determinate recall cases, the release process is much faster once the Parole Board has made its decision and so the adverse impact (e.g. delays to release) would be greater.
41. Indeterminate prisoners for whom the Parole Board declines to direct release but recommends to the Secretary of State that they should be transferred to open conditions will be able to challenge these decisions under the terms of the reconsideration mechanism. The mechanism will not apply if the Secretary of State disagrees with a Parole Board recommendation for transfer to open conditions. The Parole Board's advice on transfers to open conditions is not binding on the Secretary of State and so it will remain open to him not to accept the Board's recommendation without recourse to the reconsideration mechanism. He can also decide to transfer a prisoner to open conditions without having a recommendation from the Parole Board.
42. The panel at a reconsideration hearing will be able to consider a prisoner's suitability for open conditions afresh during any reconsideration hearing. This does not apply to EDS cases because their suitability for open conditions is determined by HMPPS without input from the Parole Board.
43. Those respondents who disagreed with the question raised concerns related to transparency and resources which will be addressed later in this report.

## **Q2. Which individuals or groups should be able to make an application for a decision to be reconsidered?**

44. There was a wide variety of suggestions on which individuals or groups should be able to make an application but responses tended to fall into two camps: a) the general public, or b) only the parties to the oral hearing.
45. Almost all of the 28 respondents who had professional knowledge or experience of parole ('the expert group') felt that reconsideration applications must be limited to the parties to the hearing. This group included the Parole Board, the Victims' Commissioner and representatives from the legal profession.
46. There was recognition among this 'expert group' that victims needed a way to apply and there was support, in particular from the Victims' Commissioner, for victims making their applications via the Secretary of State rather than directly to the Parole Board. Comparisons were drawn by several respondents to the Unduly Lenient Sentence (ULS) scheme where the Attorney General's Office considers the applications made by members of the public to determine which meet the threshold for referral to the Court of Appeal.

47. One respondent in this group felt that victims should not be able to apply and another felt it should be restricted only to those victims receiving information under the Victim Contact Scheme.
48. In terms of who else might be eligible to apply, the expert group generally favoured using the 'standing' concept applied in judicial reviews whereby only those who can demonstrate a sufficient connection to, and harm from a decision may challenge it. There was resistance against the idea of having a process open to all, due mainly to the risk of creating a disproportionate and unmanageable volume of applications. There were also concerns about the potential risk that public or media pressure – without detailed knowledge of the individual circumstances or any standing in the case – could have an undue influence on parole outcomes.
49. Among the 46 respondents who favoured a process more open to others, there were various suggestions about which groups should be able to make an application to have a parole decision reconsidered. The police, prison/probation staff, local authorities, Police & Crime Commissioners and the Crown Prosecution Service were all suggested by a number of respondents. Approximately two-thirds of this group wanted anyone to be able to apply and the remainder suggested some restrictions. For example, some wanted a scheme for victims only while others shared the views of the expert group that the general public or the media should not be able to make applications.

### ***Government Response***

50. The Government has concluded that formal applications for a decision to be reconsidered should be limited to the parties to the hearing, i.e. the prisoner and the Secretary of State – with victims able to make their representations for reconsideration via the Secretary of State.
51. We recognise that there is extensive public interest in parole decision making. There are also stakeholders outside the parole process who have a legitimate interest in parole decisions and who may have genuine concerns about the release of particular offenders. We have considered the issue at length but have concluded that a mechanism which enabled applications from anyone outside the parties to the hearing would be impractical due to the potential volume of applications it could generate. It would also be unworkable due to the necessity for applications to be made quickly and with sufficient knowledge of the case to be able to present an argument as to why the decision or the process was legally flawed. Given the purpose of the reconsideration mechanism is largely to have an alternative avenue to judicial review for challenging unlawful or flawed decisions, we consider that, like judicial review, challenges should come from those with a standing and involvement in the case rather than from the public at large.
52. It has also been necessary to consider what can be achieved within the Parole Board Rules, which is the only vehicle available to make provision for reconsideration without primary legislation. This means that we are limited to making changes to current Parole Board procedures and the Rules do not allow for the creation an entirely new and wide appeal mechanism to challenge Parole Board decisions.
53. In her consultation response, the Victims' Commissioner, Baroness Newlove, recognised some of the practical difficulties that would be created if victims had to make reconsideration applications directly to the Parole Board. She favoured an

approach where victims apply via the Secretary of State and we agree that this provides the best solution.

54. The model that we have designed means that victims will have a way to voice their concerns about individual parole decisions without having to resort to costly judicial review proceedings. Channelling the victim's voice through the Secretary of State will mean that the application can be more comprehensively constructed because it will benefit from the resources at the Secretary of State's disposal, including legal advice, access to the full parole dossier and the ability to consult the prison and probation staff directly responsible for managing the prisoner and who are involved in the parole process.
55. The Secretary of State is also best placed, mainly through VLOs, to provide victims with the support, advice and feedback needed to help them understand and talk them through the reconsideration process.
56. The Victims' Commissioner felt that all victim requests for reconsideration should always be sent on to the Parole Board. We have decided not to adopt this recommendation in full because we feel that as a party to the parole process, the Secretary of State should retain some discretion over whether or not to seek to challenge a decision. This will also help to keep the mechanism manageable and proportionate.
57. The criteria for reconsideration are discussed in more detail below but the threshold will be high and a decision will need to be legally flawed. The Secretary of State is well placed to assess whether there may be an arguable case for reconsideration and we believe he should not be compelled to submit every request from a victim to the Parole Board where it is assessed that there is no evidence or grounds to believe the threshold may have been met.
58. We will provide victims and VLOs with clear, comprehensive guidance about the reconsideration mechanism to explain the criteria and give examples of the types of circumstances in which an application to the Parole Board might be justified.
59. However, it is inevitable that on occasion victims will raise concerns that fall considerably short of the threshold and consequently there will be no realistic chance of successfully challenging the Parole Board's decision. In those circumstances, the Secretary of State will decline to submit an application to the Parole Board but he will provide the victim with detailed reasons for his decision. We do not consider that it would be workable or appropriate for every request for reconsideration to be put before a Parole Board panel to decide. This process will also reduce the period of uncertainty for all concerned and will enable the Board to concentrate its judicial resources on the small number of decisions where there may have been serious flaws which need to be looked at again.
60. We noted the views of many respondents that the reconsideration mechanism should be open to applications more broadly including from bodies like the Crown Prosecution Service, Police & Crime Commissioners and local authorities. In practice, under the framework we are proposing, it will be possible for anyone to petition the Secretary of State to ask him to consider making an application. However, we have decided not to create any specific new provisions to facilitate this at present because there would be practical barriers to overcome and significant additional resource demands incurred – and we do not believe that this would be proportionate or justify the delays it would create.



61. The timing of parole reviews and the resulting decisions are only made available to the parties to the hearing and are not published more widely (the information is communicated to victims who are participating in the Victim Contact Scheme). In order to facilitate applications from sources other than the Secretary of State, the prisoner or the victims we would need to share information about parole decisions more widely, and in sufficient detail to enable a meaningful argument to put forward. We do not consider that would be reasonable or proportionate, especially given the high threshold that will be required for reconsideration.

**Q3. Do you agree that any reconsideration mechanism introduced should consider grounds similar to those used within judicial review?**

**Q4. Do you agree that the grounds used within First-tier Tribunal provide helpful parameters for the grounds of a reconsideration mechanism?**

62. These two questions have been summarised together because many respondents provided a single answer that covered both. 13 consultation respondents did not answer the questions or did not feel they had sufficient knowledge to offer a view.
63. The majority who replied (56 respondents) were content with the judicial review and/or the tribunal criteria. In general, it was felt they were appropriate, fair and would serve to minimise applications without merit. Only three respondents were not happy with either judicial review or the first-tier tribunal grounds with the only comment being that the criteria should be as broad as possible. Others felt the two sets of criteria were too similar to make a choice between them.
64. Further options were mentioned in the body of the consultation document which included having a merits-based system whereby decisions could be challenged based on disagreement with the result; and the possibility of having automatic reconsideration of some decisions. There was very little support for either suggestion among the respondents.

**Government response**

65. The Government agrees with the respondents who favoured a high threshold for reconsideration applications along the lines of judicial review or First-tier tribunal criteria.
66. We realise that this may not go as far as victims would want but there are strong arguments against going any further at the present time. There was little or no support for a merits-based system among the consultation respondents. The majority of respondents were happy with the prospect of judicial review-type criteria which they felt were appropriate and fair. A merits-based system could create a potentially unmanageable number of applications that would cause additional delays across the whole parole process if the Parole Board had to devote resources to justifying a large number of its decisions, the vast majority of which are sound.
67. Managing the potential impact of this would require a level of additional resources in both the Parole Board and HMPPS that would not be reasonable and proportionate in the Government's view. Notwithstanding the resource demands, we are also constrained by the current legislative framework. A merits-based appeals system would require primary legislation which is not feasible in the short-to-medium term and cannot be delivered by changing the Parole Board Rules alone.

68. We were mindful of the concerns of a number of respondents that the reconsideration process must be workable and proportionate; that it should not create unnecessary delays or uncertainty in the system (which is bad for victims, prisoners and the interests of justice); and that it should not impose unmanageable demands on limited resources that could not be justified. All of these reasons pointed to setting a high threshold for reconsideration and limiting applications only to seriously flawed decisions; rather than allowing the reconsideration of decisions based on a disagreement with the outcome.

**Q5. How could we increase public access to reconsideration hearings in some circumstances and provide more information about reconsideration decisions whilst also making sure that the process remains robust and protects victims?**

**Q6. What more could we do to make the reconsideration process as open and transparent as possible?**

69. Responses to these questions can also be summarised together for the same reasons as questions 3 and 4 above.
70. There were 13 comments in favour of allowing public access to hearings but 18 respondents felt access should be restricted to interested parties only. Allowing public access was also cited by eight respondents as a way to increase transparency. Those against public access shared many of the same concerns which included:
- The potential effect a public hearing may have on the openness of the witnesses where candid evidence was essential to reaching a properly informed decision.
  - Risks to the prisoner's ability to resettle if released, thereby undermining the purpose of the hearing to determine whether the prisoner could be managed safely and effectively in the community on licence.
  - Acknowledgement of the practical and resource implications of holding public hearings which would build in costs and delays to the administration of justice.
  - The need for privacy around sensitive prisoner and victim information.
71. Some of those in favour of public hearings also acknowledged some of these potential risks and recognised that there would be a need to have closed hearings where necessary.
72. A total of 30 respondents felt that transparency and openness could be improved by releasing more information about parole hearings and their outcomes publicly. For example, publishing information online such as prisoners' names, hearing dates, results or decision summaries. More generally, respondents felt that clearer, more comprehensive information about the parole process was necessary to improve everyone's understanding of it. One respondent suggested the creation of a 'parole compact' available to the public so that everyone knows what to expect from the parole process.
73. There was support for strengthening the Parole Board's independence by reforming it as a parole tribunal. Three respondents suggested introducing some form of independent scrutiny, such as observers for hearings but there was little support for measures such as naming Parole Board members or oral hearing witnesses, mainly due to safety and candour concerns.

74. Other respondents questioned the need for a new mechanism at all by pointing out that judicial review was already available and met the requirement to have an open, transparent and robust system to challenge parole decisions.

### **Government Response**

75. The Government is keen to ensure that the reconsideration process – indeed the parole process as a whole – should be as open and transparent as possible. The report on the outcome of the Review of the Parole Board Rules contains a number of measures designed to improve transparency which will be taken forward. The Parole Board panel chairs already have the power to admit observers to hearings but we have decided against introducing any new broader measures to facilitate public hearings. We have also decided against publicly naming the hearing participants. We agree with the majority of respondents that such measures would risk undermining the integrity of the process and carries too many risks.
76. But we agree it is important for the mechanism to be open and transparent in other ways – in particular by having clear, comprehensive and publicly available information about the process; by making sure victims are provided with advice and support; and by making sure that all decisions made are explained in full, with reasons provided. The decisions will be disclosable and will include the name of the Parole Board judicial or accredited member who determined the case.
77. Where a reconsideration application results in a new oral hearing, these will be managed in the same way as all other parole hearings. Victims will be able to submit their Victim Personal Statement (VPS), or an updated one – and will be provided with a decision summary if they request one.
78. We share the concerns of consultation respondents that allowing public access could compromise the confidence of witnesses and panel members to be as open and candid as a closed hearing allows. Hearings also involve detailed discussions about the prisoner's physical and mental health, and the plans for their release including living arrangements, employment and medical care. Disclosing such information publicly would raise safety and privacy concerns for prisoners and their families and may undermine the ability of prisoners to resettle successfully and safely. Furthermore, if victims are participating as well by providing their VPS at the hearing, they may not wish for their personal details and concerns to be open to the public.
79. The practical barriers to holding public hearings are also significant. Parole hearings are typically held in prisons and many establishments are simply not equipped to accommodate or safely manage public attendance and to provide such facilities across the prison estate would require a large programme of investment. Holding hearings in more suitable locations outside of prisons (such as courts) would also create significant demands in terms of needing access to the premises frequently enough to accommodate the numbers of parole hearings; and the cost and logistical difficulties of transporting prisoners to and from the locations. There would also be very real security risks associated with transporting prisoners when the dates, destinations and approximate times would be publicly known in advance. We are also satisfied that the current arrangements that allow the Panel Chair to admit anyone to the hearing are sufficient.

80. The Government notes and agrees with the comments suggesting a need for clear, comprehensive guidance. We will take this into account when implementing the reconsideration mechanism and will endeavour to provide thorough advice and information about all aspects of the process. We are particularly aware of the need to make the process as accessible as possible for victims and there will be dedicated guidance and support from them.
81. We are also taking steps to increase public understanding of the parole process by producing an Operational Protocol between the Parole Board and HMPPS. Separately the Parole Board will also be producing Standard Practice guidance to sit alongside the Rules. Both of these documents will be publicly available. More information on this can be found in the report on the review of the Parole Board Rules.

**Q7. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.**

82. We have updated our equality considerations<sup>1</sup> as a result of the responses to this question. A further equality assessment will be carried out alongside any changes to the Parole Board Rules.

***Equality duties***

83. Section 149 of the Equality Act 2010 (“the EA Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA Act; (2) advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and (3) foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
84. Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the EA Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

***Summary***

85. There were 36 responses to this question and some of these made general comments that did not address the possible impact on individuals with protected characteristics.
86. Of those who addressed the equalities issues, the feedback included:
- The need to ensure that Parole Board members have been adequately trained on equalities issues.
  - More research should be done on Parole Board decision making from an equalities perspective.

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<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/reconsideration-of-parole-board-decisions/supporting\\_documents/PBEqualityStatementConsultation%20Document%20FINAL.pdf](https://consult.justice.gov.uk/digital-communications/reconsideration-of-parole-board-decisions/supporting_documents/PBEqualityStatementConsultation%20Document%20FINAL.pdf)

- Information must be presented and accessible in a variety of formats (e.g. different languages and braille).
- Greater public access to the parole process may reveal sensitive aspects about prisoners (e.g. mental/physical health, trauma histories, sexuality etc). This could be used against them and may compromise their resettlement and rehabilitation.
- Disabled access to prisons can be poor which can discourage victim participation e.g. the lack of hearing loops at hearings.
- Several respondents noted that the consultation made reference to apparent racial bias in parole decision making. In their view the proposed reconsideration mechanism will not address this.
- We should look closely at the potential impact on prisoners with mental health issues and also on female offenders.
- Special consideration needs to be given to public access where the victim and/or prisoner are under 18.

### **Government Response**

87. We believe the adoption of a reconsideration mechanism is not directly discriminatory as the changes from this policy would be applied in the same way to all participants in the parole process. We do not consider that this results in people being treated less favourably because of protected characteristics.
88. However, we know that that certain groups with protected characteristics are overrepresented among both the prisoner population and among those who are victims of homicide and violent or sexual crime. Relative to the general population, prisoners are more likely to be male, aged between 18 and 39, have a disability, have a Black or Black British ethnicity, be from a mixed ethnic group, or be Muslim.<sup>2</sup> Furthermore, it is likely that those identified as Gay, Lesbian, Bisexual or Other (LGB) are overrepresented in the prison population when compared to the general population.<sup>3</sup>

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<sup>2</sup> See Prison Population 30 June 2018: *Offender Management statistics quarterly: April to June 2018*, accessed at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2018>. For those serving a life sentence or a sentence of imprisonment for public protection, males are slightly overrepresented with respect to the total prison population (96.62% of life and IPP prisoners as opposed to 95.39% of the total prison population, see *ibid.* tables 1.1 and 1.9a.) This slight overrepresentation is consistent with statistics from previous quarters. Information about other protected characteristics is not available for this subset of prisoners.

<sup>3</sup> The most recent study shows that 2.6% of prisoners identified as LGB. This is likely to be under-reported. Sexual orientation was not collected in the 2011 census. The most recent Experimental Official Statistics identified 2% of the general population as LGB. It is therefore likely that those who identify as LGB are overrepresented with respect to the general population. See *National Offender Management Service Annual Offender Equalities Report, 2016/17*, 12, accessed at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663390/noms-offender-equalities-annual-report-2016-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663390/noms-offender-equalities-annual-report-2016-2017.pdf) and *Sexual Identity: UK, 2016*, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualidentityuk/2016>

89. While direct data on victims of crime where the offender who committed a crime against them goes through the parole process is unavailable, data is available on the characteristics associated with being a victim of homicide or of a violent or sexual crime. Relative to the general population, victims of homicide are more likely to be male.<sup>4</sup> Victims of almost all types of sexual assault are far more likely to be female.<sup>5</sup> Victims of almost all types of domestic violence are also far more likely to be female.<sup>6</sup> Victims of almost all other violent crime are more likely to be male, aged between 16 and 24, or single.<sup>7</sup>
90. By virtue of their overrepresentation, we acknowledge that any positive impacts arising from the introduction of a reconsideration mechanism will benefit those groups listed above relative to the general population. Similarly, any adverse effects associated with the reconsideration mechanism will disadvantage those groups listed above relative to the general population.
91. The aim of the reconsideration mechanism is to benefit victims by improving their access to justice and giving them extra assurance that there is a mechanism in place to more easily reconsider Parole Board decisions. It is further expected that the proposed changes will improve prisoners' access to justice as part of a fairer and more easily accessible process by which they may seek to challenge a Parole Board decision against their release. Potential adverse impacts of the mechanism are unnecessary delays and uncertainty for victims and prisoners alike, including prolonged detention. We have explained above how we propose to mitigate these risks and avoid any adverse effects arising from the introduction of this mechanism.
92. There is some evidence too that offenders who are white are more likely to be approved for release than those from any other ethnic background. This is the case for both review cases and recall hearings.<sup>8</sup> Should this likelihood maintain for cases that are to be reconsidered, there is a risk that this may compound the adverse situation that already obtains for those from non-white ethnic groups. Although we expect the number of prisoners to be affected by the reconsideration process (either positively or negatively) to be exceptionally small, we recognise fully the racial bias that exists in the outcome of parole hearings. We support all measures that the

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<sup>4</sup> See Homicide in England and Wales: year ending March 2017, §4, <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2017>

<sup>5</sup> See Sexual offences in England and Wales: year ending March 2017, § 6, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

<sup>6</sup> See Domestic abuse: findings from the Crime Survey for England and Wales: year ending March 2017, §5, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusefindingsfromthecrimesurveyforenglandandwales/yearendingmarch2017>

<sup>7</sup> See The nature of violent crime in England and Wales: year ending March 2017, §8, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/thenatureofviolentcrimeinenglandandwales/yearendingmarch2017>

<sup>8</sup> For review cases in 2016, 43% of White offenders were released from prison while for other ethnic groups percentages ranged from 36% to 39%. For recall hearings, 59% of White offenders were released from prison, while for other ethnic groups percentages ranged from 49% to 58%. See Statistics on Race and the Criminal Justice System 2016: A Ministry of Justice Publication under Section 95 of the Criminal Justice Act 1991, 85-86, accessed at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/669094/statistics\\_on\\_race\\_and\\_the\\_criminal\\_justice\\_system\\_2016\\_v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669094/statistics_on_race_and_the_criminal_justice_system_2016_v2.pdf)

Parole Board is taking to address this, that will encompass all elements of the parole process and parole hearings, including reconsideration hearings. This work is being led by the Parole Board's equality and diversity advisory group. As the new Chair of the Parole Board, Caroline Corby, states, "The Parole Board has 240 members of which only 11 have a BAME background. In order to ensure that we have the confidence of prisoners and the public, a key priority for the Board will be to address the relative lack of ethnic diversity among Parole Board members in the next recruitment round in 2019."<sup>9</sup> We further support any action undertaken by the Parole Board to ensure adequate member training with respect to equalities issues or research into Parole Board decision making from an equalities perspective.

93. The intention and effect of the reconsideration mechanism will be to improve both victims' and offenders' access to justice, to allow decisions made that concern them to be more easily reviewed. We therefore believe that any particular disadvantage to people with protected characteristics via the reconsideration mechanism reform is a proportionate approach to achieve these legitimate aims.

### ***Privacy***

94. Respondents identified other potential adverse impacts of the reconsideration mechanism that relate to individual privacy, personal risk and rehabilitation concerns. We do not propose to make reconsideration hearings open to the public at large. Reconsideration hearings will therefore be equivalent in this respect to other parole hearings. The risks of revealing sensitive information about prisoners will be the same and will be treated with the same seriousness. Personal data that may put prisoners at risk will not be released and rigorous gatekeeping by the Parole Board will take place with respect to maintaining the balance between the fundamental right of open justice and proportionate interference with prisoners' rights under Article 8 of the European Convention on Human Rights.

### ***Discrimination arising from disability and duty to make reasonable adjustments***

95. Proposals concerning the publication of information about Parole Board practices on GOV.UK will, under the rules governing the GOV.UK website, take into account disability, numeracy and literacy issues, and communication and learning difficulties.
96. Proposals arising from the Review of the Parole Board Rules should support eliminating discrimination and advancing the equality of opportunity for those prisoners with mental health needs and learning difficulties. These include the introduction to the Parole Board Rules of provisions for the procedure to follow where a prisoner lacks the mental capacity to ensure a fair hearing (for instance, through the appointment of suitable representation). These proposals would apply equally to the reconsideration process as to the rest of the parole process. We support further any action taken by prisons and the Parole Board to improve accessibility to those with disabilities who participate in the parole process.

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<sup>9</sup> [https://www.gov.uk/government/news/caroline-corby-begins-as-permanent-parole-board-chair?utm\\_source=ed7be1e8-bf27-434e-bbb1-8721705ad626&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=immediate](https://www.gov.uk/government/news/caroline-corby-begins-as-permanent-parole-board-chair?utm_source=ed7be1e8-bf27-434e-bbb1-8721705ad626&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate)

**Q8. Do you agree that we have correctly identified the range of impacts under each of the proposed reforms set out in this consultation paper? Please give reasons.**

97. There were only 29 responses to this question, 13 of which raised the issue of resources. They highlighted the need for any new process to be properly funded to minimise the risk of causing unnecessary delay. It was felt the proposals would create additional demand and new financial costs on the Parole Board; the Secretary of State; prisons and probation; and legal aid for prisoners. All of these would need to be adequately addressed.
98. Several respondents noted that the Parole Board had made great strides in reducing the number of outstanding oral hearings and eliminating the backlog that until recently had been causing significant delays to the listing and hearing of cases. Concerns were raised that insufficient resources for the reconsideration mechanism may jeopardise this progress and see a return to backlogs and delays.
99. In addition, respondents highlighted that the impact assessment which accompanied the consultation did not address the cost of delayed prisoner releases. In their interpretation of the consultation document, all prisoners would need to be held in custody for longer than present to allow time for reconsideration applications. This would incur costs in terms of prison places and the impact of this needed to be taken into account.
100. Other comments made in response to this question included:
- Any measures to disclose the names of Parole Board members or oral hearing witnesses would be a risk, both in terms of their safety and the candour of evidence.
  - A number of respondents raised the question of legal aid for victims. They felt that victims would need expert legal advice in order to make applications and this should be funded by legal aid.
  - Risks to the well-being of prisoners caused by uncertainty over whether hearing outcomes will be challenged, and by the additional stress of having their oral hearing held in public.
  - Delays to releases caused by reconsideration applications may compromise the release arrangements in the most complex cases. These can often involve multiple stakeholders and very high demand on bed spaces if there are specific care needs present in the case.
101. Potential positive impacts mentioned in the responses included greater transparency and possible cost savings by reducing the number of parole decisions that get challenged in the courts.

***Government response***

102. We acknowledge, and agree with, respondents' concerns about the need to provide sufficient resources for the reconsideration mechanism to minimise the risk of creating unnecessary delays. We believe our proposed model is realistic, fair and deliverable. By limiting eligibility for the reconsideration mechanism only to ISP and EDS cases we will be focussing efforts and resources on the most contentious cases.



103. As we have already explained, the criteria for reconsideration will set a high bar for applications and decisions will need to be legally flawed in some way to trigger reconsideration. This will mean that only a small number of cases are likely to meet that threshold and go through the reconsideration process. But we also need to factor in the number of requests for reconsideration likely to be received from victims, and applications submitted by prisoners, all of which will need to be carefully processed, considered and responded to – and that will require resources to deliver that. Some information on our analysis of the potential impact of reconsideration is contained in the next section.
104. We note the proposal from some respondents that victims should be entitled to legal aid to help them with making reconsideration applications but we concluded that this would not provide the best way for victims to access the process. Under the model being proposed, victims will ask the Secretary of State to consider making an application for reconsideration. Victims will need only to outline their concerns (likely using a straightforward template which will assist in focusing those concerns as far as possible on the judicial review type criteria) and it will be for the Secretary of State to prepare the detailed argument based on the access he has to all the detailed evidence and information about the case.
105. Part of the reason for proposing the reconsideration mechanism was to avoid the need for victims to engage legal representation and pursue a costly and complex legal challenge through the courts. We want the mechanism to be as accessible and straight-forward as possible. The model we propose avoids the need for victims to engage lawyers as the Secretary of State will provide the expertise and will compose the detailed argument in favour of reconsideration if that evidence suggests there may be an arguable case that the decision is flawed.

## Impact and implementation

106. Given this will be an entirely new mechanism, we have had to make some assumptions about:
- The proportion and number of Parole Board decisions in ISP and EDS cases that might attract a request or application for reconsideration;
  - Of those, in how many cases there may be sufficient evidence / grounds to make a formal application to the Parole Board for reconsideration;
  - The number of cases submitted to the Parole Board that might result in the judicial member deciding that there should be a reconsideration of the case;
  - The number and impact of the small number of cases which go on to be reconsidered by a fresh Parole Board panel.
107. The costs of the reconsideration process have been modelled, including various costs falling upon PPCS, the Parole Board, legal aid, prison and probation staff involved in preparing for oral hearings, and “bed and board” for prisoners held in custody beyond the point at which they would have been released under current processes.
108. For 2019/20, we estimate there will be approximately 3,400 parole decisions eligible for reconsideration. We do not believe that large numbers of parole decisions are legally or procedurally flawed and therefore we expect the number of applications to be small. Using evidence from HMPPS and the Parole Board, we estimate that the Secretary of State may seek to challenge between 1% and 5% of release decisions and prisoners may seek to challenge between 13% and 16% of decisions to remain in custody. Not all reconsideration applications will result in a new hearing and we estimate that it will generate approximately 25 to 90 additional oral hearings per year. In comparison, during 2017/18 the Board completed around 5,600 oral hearings across all review types.
109. Total first year costs for the reconsideration mechanism are estimated to be in the region of £1.3m and approximately £1.2m per year thereafter. Given the relatively small number of prisoners affected by reconsideration at any one time, we estimate the impact on prison population to be minimal.
110. The reconsideration mechanism will be brought into effect by means of new provisions included in the Parole Board Rules. This will be part of a number of new and amended Rules which are being proposed following our wider review of all the Parole Board Rules. Amending the Rules requires secondary legislation and we propose to lay the Statutory Instrument before Parliament in the coming months.
111. Before the mechanism can be implemented, we will be seeking stakeholder views, fine-tuning how the process will operate and preparing the necessary guidance, training and documentation; as well as making sure the necessary resources are in place in preparation for launch.

112. It is crucial for any new process that it is understood by those who are taking part. We will be paying particular attention to developing clear guidance for victims and VLOs. This material will sit alongside the proposed new Standard Practice guidance and the Operational Protocol between HMPPS and the Parole Board which will provide a greater level of transparency and clarity for all aspects of the parole process. Those documents, as well as a new Policy Framework on the Generic Parole Process that HMPPS will be publishing, will also contain reference to and further support the delivery of the reconsideration mechanism.

## **Annex A – List of organisations who responded**

In addition to private individuals, responses were received from:

Aanchai Women's Aid  
Association of Prison Lawyers  
Baroness Newlove, Victims' Commissioner for England & Wales  
Bhatt Murphy Solicitors  
British Association of Social Workers  
Carringtons Solicitors  
Centre for Women's Justice  
Deputy London Mayor for policing and crime  
End Violence Against Women  
False Allegations Support Organisation  
Her Majesty's Inspector of Probation  
Howard League for Penal Reform  
Kesar & Co Solicitors  
KnifeCrimes.org  
Lansbury Worthington Solicitors  
Mayor's Office for Policing & Crime (MOPAC)  
MIND  
National Audit Office  
Northumbria Local Criminal Justice Board  
Parenting Together  
Pathways Psychological Services Limited  
Prison Reform Trust  
Prisoners' Advice Service  
Rape Crisis England & Wales  
Residents at HMP Coldingley  
Rethink Mental Illness  
Rights of Women  
The Bar Council  
The Law Society  
Parole Board for England & Wales  
Parole Board for Scotland

Parole Commissioner for Northern Ireland

Police & Crime Commissioner for Avon & Somerset

Police & Crime Commissioner for Durham & Cleveland

Police & Crime Commissioner for Northamptonshire

Youth Justice Board





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