



Outline of Operational Protocol

On 4 February 2019, the Government published its review of the Parole Board Rules and its response to the public consultation about creating a reconsideration mechanism for Parole Board decisions. The Parole Board Rules 2019 were enacted on 22nd July 2019 with the aim of making the parole process generally more effective. This Protocol was one of the commitments to come out of the Rules review and is one of the measures intended to improve transparency and understanding of how the parole system operates. It supplements the Rules by setting out the roles and responsibilities of the Secretary of State and the Parole Board within this new operating model.

The Protocol is operative from the later dates of signature with a transitional phase for the Parole Board to take over responsibility for third party directions starting on 1 November 2019.

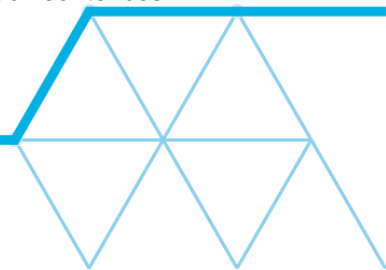
Signatories

- CEO in HMPs – Jo Farrar
- Parole Board Chair – Caroline Corby

Statutory Roles

1. The Secretary of State must refer parole eligible cases (including recall cases) to the Parole Board for a review of a prisoner's detention according to statutory requirements. The Parole Board must undertake that review on referral.
2. The Parole Board can only act when it receives a Secretary of State referral or application, except when it receives: -
 - a. an application directly from a party asking that the Parole Board reconsider their decision, or
 - b. an application from an offender serving an indeterminate sentence of Detention or Imprisonment for Public Protection (DPP/IPP) to terminate their licence after a period of 10 years following initial release¹.
3. Following a referral from the Secretary of State, the Parole Board must decide whether to release the referred prisoner. The Parole Board must not give a direction for release unless it is satisfied that it is no longer necessary for the protection of the public that

¹ The DPP (for under 18s) and IPP sentences (for adults) were abolished in 2012 but the release arrangements and provisions on licence termination applications continue to apply to those still serving such sentences.



the person should be confined. That is the statutory test for release that must be applied.

4. The Parole Board will send all decisions, including provisional decisions, to the prisoner (via the prison), the legal representative, the Secretary of State and any other relevant HMPPS employees. It is for the Board to decide who else should have sight of the decision letter, and it must not be shared further without the express permission of the Board.
5. Where the Parole Board makes a direction to release a prisoner, and that decision becomes final, the decision is binding on the Secretary of State who must give effect to it.
6. Categorisations decisions are a matter for the Secretary of State, and he may seek advice from the Parole Board when doing so. Such requests usually relate to whether an indeterminate sentenced prisoner can be safely managed in open conditions, and the Parole Board will consider the request and make a recommendation.
7. The Crime (Sentences) Act 1997 and the Criminal Justice Act 2003 require that the Secretary of State must refer an indeterminate sentenced (Life and IPP) and extended determinate sentenced (EDS) prisoner's case to the Parole Board at least every two years, and every 12 months for those serving determinate sentences.

Parties to Parole Proceedings

8. There are two parties to the proceedings: the Secretary of State and the prisoner.
9. The Public Protection Casework Section (PPCS) represents the Secretary of State and acts on behalf of Her Majesty's Prison and Probation Service (HMPPS). All communication with HMPPS witnesses, save for witness availability, must go via PPCS.

The role of the PPCS / HMPPS / Secretary of State

10. PPCS will formally refer a case with evidence required by the Schedule to the Parole Board Rules 2019 and will provide HMPPS evidence that is subsequently directed by the Parole Board.
11. If any mandatory documents (in accordance with the schedule to the rules) are not in the possession of PPCS, they will include a note in the dossier explaining this. PPCS will source mandatory documents, including those from third parties that are not in their possession at the point of referral, if directed to do so by the Parole Board. PPCS will provide information in their possession at the point of referral where there are allegations about wider offending, in accordance with guidance issued to staff in the National Probation Service.
12. PPCS will be responsible for ensuring direction compliance for HMPPS within directed timeframes. PPCS will make all applications to vary or revoke directions on behalf of HMPPS.
13. PPCS will add the prisoner's legal representations to the dossier if these have been provided to them prior to referral to the Parole Board.

14. HMPPS is responsible for explaining steps taken to verify evidence that it has submitted and indicate where this has not been possible.
15. Formal disclosure of the Secretary of State's evidence will take place at the point of formal referral to the Parole Board. Prison establishments will provide prisoners with a copy of their dossier.
16. HMPPS will assist unrepresented prisoners as appropriate. HMPPS will make the final decision on what assistance is appropriate in any given case. This will not include the provision of legal advice to the prisoner or the provision of representation for a prisoner who lacks mental capacity to instruct their own representative.
17. PPCS will provide a Secretary of State representative to attend a hearing and assist the Panel if a case falls within the published criteria, available at the link below:

<https://www.gov.uk/government/publications/use-of-secretary-of-state-representatives-in-parole-proceedings>

18. PPCS will submit victim personal statements or requests for victim related licence conditions as appropriate, including the submission of non-disclosure applications.
19. PPCS will have full access to the dossier for the purposes of deciding whether to use executive powers to release a recalled determinate sentenced prisoner or when transferring a prisoner to open conditions. If this happens during the parole process, PPCS will notify the Parole Board as soon as possible.
20. PPCS will be responsible for the adding and disclosure (to the prisoner and their representative) of any further HMPPS witness reports to the dossier after it has been submitted to the Board.
21. The Secretary of State via PPCS is not responsible for obtaining evidence from third party witnesses as directed by the Parole Board after referral (unless documents in accordance with the Schedule to the Parole Board Rules are missing at the point of referral) but will assist in exceptional circumstances. The circumstances in which the Parole Board will seek assistance from PPCS will be set out in an 'escalation agreement'.
22. The Secretary of State will set the time-frame between reviews but will take account of any recommendation by the Parole Board on the next steps for any subsequent review.

The Role of the Parole Board

The outcomes the Parole Board has at its disposal following a paper panel or oral hearing are:

- a. the prisoner is suitable for release; or
 - b. the prisoner is unsuitable for release; and
 - c. recommendation for open conditions (in certain cases).
23. From the point of referral by the Secretary of State and receipt of a dossier containing all the mandatory documents in accordance with the Schedule to the Parole Board Rules, the Parole Board will be responsible for progressing the review of detention and

deciding how the case is to be dealt with (including the scheduling of an oral hearing where that is required).

24. The Parole Board will reject the dossier prior to any decision being taken, and will notify PPCS, if the material required by the Rules is not included in the dossier. In such a case, no referral will have been deemed to have taken place.
25. The Parole Board is responsible for securing material from the prisoner (and/or their legal representative, if s/he has one). PPCS will invite the prisoner (and their legal representative) to make representations direct to the Parole Board when the case is referred to the Board, and thereafter, the Board will direct any further material from the prisoner or his/her legal representative that the panel deems necessary. The Board may request representations directly from the prisoner (and/or their legal representative) for recall cases, post referral.
26. The Parole Board will escalate, via PPCS, witness attendance for HMPPS staff who refused or failed to attend. The panel may ask PPCS to resolve the issue of non-compliance.
27. The Parole Board is responsible for escalating, via PPCS, any issues of non-compliance regarding directions for information from HMPPS staff.
28. The Parole Board is responsible for directing third parties to provide information and/or attend as a witness at an oral hearing. The Board will also pursue the compliance with directions by those third-parties, assisted by PPCS only in exceptional circumstances as set out in the escalation agreement.
29. The Parole Board will make decisions on all non-disclosure applications from the Secretary of State (including on behalf of victims), and third parties who have been directed to provide further material to the Parole Board. All non-disclosure applications will be dealt with according to statutory timeframes provided for in the Rules.
30. The Parole Board will be responsible for adding any further Parole Board directions, previous Parole Board decisions, prisoner evidence or third-party information to the dossier after it has been submitted to the Board.
31. The Parole Board is responsible for producing the final version of the dossier for the review of the case.
32. The Parole Board sets the time-frame for the review once referred and decides on any applications to alter the time frames in the rules in accordance with Rule 9 of the Parole Board Rules 2019.
33. The Parole Board will deal with applications to vary or revoke directions.
34. The Parole Board will consider Secretary of State requests for proposed licence conditions, including those from victims, and to vary licence conditions, where appropriate.
35. The Parole Board may advise the Secretary of State on what steps it assesses may be appropriate for the parties to take before the next referral of the case. However, the decision on the timing of the next referral is for the Secretary of State.

36. The Parole Board will undertake a programme of producing and publishing a series of Standard Practice guidance over time, the first of which to be published alongside the Operational Protocol. Standard Practice will be applied in all but exceptional cases and the Board will provide reasons if it is necessary to deviate from the published guidance in a particular case.

Reconsideration Mechanism

- 37. The Parole Board can only consider applications for the reconsideration of a provisional decision from the Secretary of State, the Secretary of State of behalf of victims, or the prisoner (including from their legal representative). These must be received within 21 calendar days of the decision being issued.**
- 38. If an application is received in time, the Parole Board will notify the other party and request a response from them. Responses must be received within seven calendar days.**
- 39. In rare cases, the Parole Board may grant a short extension to enable an application to be submitted or may reduce the 21-day period to bring forward the point at which the decision becomes final. Any application to alter the 21-day provisional decision period (either to extend or reduce it) should be submitted in good time to enable the Parole Board to make a decision within the 21-day period. The Parole Board will communicate agreed alterations to the provisional decision period to all parties.**
- 40. The Parole Board will notify parties of the outcome of a reconsideration application and provide reasons for the decision. The Parole Board will direct how the case is to be dealt with if a reconsideration application is accepted.**
- 41. PPCS will ensure victims are informed of the progress and outcome of applications for reconsideration.**
- 42. As made clear in the Crime (Sentences) Act 1997, and subject to an opportunity to seek reconsideration under the 2019 Rules, once a panel has made a final decision as to release that decision is considered final in law and is binding on the Secretary of State.**
- 43. In the period prior to giving effect to the Board's direction, the Secretary of State may make such further lawful applications (e.g. in respect of licence conditions) to the Board as he considers appropriate.**

The Role of Third Parties

45. A third party is any person or organisation other than the principle parties who are directed by the Parole Board to provide material. Their role is as follows:
- a. To provide third party evidence as directed.
 - b. To liaise directly with the Parole Board secretariat about such directions.
 - c. For those authorised by the Secretary of State to do so under the Rules, to submit any non-disclosure applications directly to the Parole Board. Those third parties authorised to make applications can withdraw information in accordance with Rule 17.
46. Third-party representatives may be directed to attend an oral hearing to give evidence.
47. Third parties include, but is not limited to:
- a. HMCTS
 - b. Crown Prosecution Service
 - c. NHS providers
 - d. Social Services, Local Authorities, Children’s Services, Housing Departments
 - e. Mental Health providers
 - f. Official solicitor
 - g. Police
 - h. Home Office/UKVI

Data

48. HMPPS and the Parole Board agree to share Management Information for the benefit of the process as a whole and continuous improvement, in line with the GDPR.

Non-Disclosure

49. The Secretary of State and any third party authorised by the Secretary of State (“authorised third party”) may apply to the Parole Board for information or any report (“the material”) to be withheld from the prisoner, or from both the prisoner and their representative. Where a direction is made under Rule 17 paragraph (5)(b) of the Parole Board Rules to withhold material from a prisoner who does not have a representative, the prisoner is deemed to have made an appeal.
50. For further information, please refer to the Parole Board Rules 2019 and Explanatory Memorandum.

Case Conferencing

51. The Parole Board may, in certain circumstances, direct a case conference to take place to discuss certain elements of a case, with a representative from both parties in attendance and, where required, other witnesses may be called to attend. This usually happens via video-link or skype.

Review

52. This document will be subject to regular review by senior managers at the Parole Board and PPCS with the first review being three months after publication.

Signed 

Name Caroline Corby

Date 03/02/2020

Chair of the Parole Board

Signed 

Name Jo Farrar

Date 03/02/2020

Chief Executive Officer of Her Majesty's Prisons and Probation Service

