



CONSULTATION BY THE CIVIL PROCEDURE RULE COMMITTEE (CPRC)

REFERRAL OF RELEASE DECISIONS

Overview

The CPRC is responsible, under the provisions of the Civil Procedure Act 1997, for making rules of court governing the practice and procedure to be followed in the Civil Division of the Court of Appeal, the High Court and the County Court. It is to do so with a view to securing that the system of justice is accessible, fair, and efficient, and to try and make rules that are both simple and simply expressed.

Under section 3 of the 1997 Act, the CPRC is, before making rules, to consult with such persons as they consider appropriate.

This public consultation was commissioned at the CPRC meeting of 9 May 2025 (the minutes of which can be read online here <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#minutes>).

Background

The Secretary of State for Justice ('SSJ') will shortly have the power to direct the Parole Board to refer certain top-tier cases to the High Court for a new release decision. This is referred to as the 'parole referral power'.

Sections 61 and 62 of the Victims and Prisoners Act 2024, respectively, confer this power by amending the relevant legislation for indeterminate and determinate sentenced prisoners (s. 32ZAA of the Crime (Sentences) Act 1997 and s. 256AZBA of the Criminal Justice Act 2003).

Statutory and policy criteria must be met before the SSJ can direct that a case is referred to the High Court. The High Court will retake the release decision for itself by applying the statutory release test (that it is no longer necessary for the protection of the public for the prisoner to be confined). It must then either order the SSJ to give effect to the Parole Board's release direction or must make an order quashing the Parole Board's release direction.

The implementation of this new power requires new provisions in the Civil Procedure Rules.

This consultation

We now present the proposed Rules and Practice Direction (attached as separate documents) for consideration. A new section is being added to the Rules in Part 77 and the accompanying Practice Direction.

Sub-section 1 of the Rules deals with general provisions. A brief summary of each rule is provided below. The policy intention is to follow existing High Court processes wherever possible, adapted as necessary, to facilitate an efficient process for these referral cases.

- Rule 77.16 sets out the legislative basis for the referral to the High Court, for indeterminate and determinate sentenced prisoners respectively.
- Rules 77.17 and 77.18 set out that the Part 8 procedure will apply with modifications and explains who the parties to the case are, mirroring the parties involved in parole cases before the Parole Board. The referral of the case to the court is to be treated as an application by the SSJ, who is the claimant.
- Rule 77.19 sets out what constitutes an application. An application consists of two parts. Firstly, a claim form that is to be submitted by the Parole Board, in line with the primary legislation which specifies the Parole Board as the body to make the referral (77.19(1)). Secondly, the SSJ must file grounds and evidence within two days of the claim form being filed (77.19(2)). Broadly, the evidence will be the bundle of evidence that the Parole Board used to decide the case, along with the Board's decision letter, and any further information that has come to light since the Board's decision that is relevant to the taking of the release decision.
- Rule 77.19(5) provides that the duty of candour applies to these proceedings.

Sub-section 2 of the Rules make provision for a non-disclosure regime in parole referral cases. Parole proceedings may contain sensitive information such as information from intelligence sources, and as a result, a non-disclosure regime must be in place.

Rule 17 of the Parole Board Rules 2019 contains a non-disclosure regime for proceedings before the Parole Board. The reasons why non-disclosure of some material may be necessary – national security, prevention of crime or disorder and health and welfare of the prisoner or another person – contained in the Parole Board Rules 2019 are also in these draft rules to provide consistency between proceedings. Nonetheless, the policy intention behind these draft rules is for the High Court to make its own determination as to what material may be withheld.

A further policy intention was to ensure similar treatment of non-disclosable material between different regimes, so parts of these draft Rules are similar to other parts of the CPR, such as Part 79 or Part 82.

A summary of each draft rule is provided below:

- Rule 77.20 provides that a non-disclosure application must be made by the SSJ when they file material under rule 77.20 (i.e. the bundle and the grounds for referral), or alternatively as soon as possible after that point if the material has already been filed. This is to ensure the court is provided with as much information as possible upfront to support efficiency of these proceedings.
- Rules 77.21 and 77.22 distinguish between non-disclosure of material where national security is in issue and non-disclosure of other material. Where national security material is present in a referral case, Part 82 shall apply and those rules, not these draft rules in Part 77, shall apply. Otherwise, where there is material, disclosure of which would adversely affect the prevention of disorder or crime or the health and welfare of any person and withholding the material is felt to be a necessary and proportionate measure, the SSJ must follow the application process set out in 77.22 and 77.23.
- Rule 77.24 provides the procedure for the court's consideration of a non-disclosure application. The policy intention is for these to be considered on the papers wherever possible, but the court will retain a discretion to direct a hearing. Paragraphs (3)-(6) set out the consequences for each party of the court's direction on the non-disclosure application.

- Rule 77.25 provides that where the court considers it necessary to exclude the defendant from a hearing or part of it to ensure that relevant material is not disclosed to them, the court must direct the hearing or the part from which the defendant is excluded to be held in private, although each party, whether entitled to attend the hearing or not, will be told of the date and time of the hearing.
- Rules 77.26-28 contain rules about the appointment and functions of a special advocate. The policy intention is that a special advocate can be appointed at any stage in proceedings in order to represent the defendant's interests.
- Rule 77.29 provides rules as to what the court can do where the SSJ or a special advocate, where appointed, has not complied with a court direction.
- Rule 77.30 sets out that any court order may withhold reasons from its decision if it is not possible to give those reasons without disclosing non-disclosable material. Rule 77.30(2) provides that a separate judgment can be provided to parties where necessary because of non-disclosable material, in addition to the public judgment.
- Rule 77.31 exempts this sub-section of the draft rules from the existing rules in Rule 5.4B and 5.4C on supply of court documents.
- Rule 77.32 applies Part 52 – the existing rules on appeal – to non-disclosure applications made under this sub-section.

The Practice Direction supplements the rules and contains information about victim personal statements and ensures the court has regard to the MoJ and HMPPS's licence conditions policy framework when setting licence conditions. The policy intention behind both of these areas is to provide consistency with existing practices, and in particular, with the entitlements of victims before the Parole Board.

We invite your comments on the wording of these new draft rules. We want to ensure that they are clear and workable in practice for court users. Please note that this is not a policy consultation on the parole referral power but a consultation to ensure the rules are operationally effective.

How to respond

Please send your responses to CPRCconsultation@justice.gov.uk (in word or PDF format) with the subject heading "Referral of release decisions consultation".

Deadline for responses

This consultation will close on **Monday 8 September 2025**.

Questions

If you have any questions regarding this consultation, please use the email address above or email the general enquiries inbox at CPRC@justice.gov.uk

Welsh language

Please contact the Secretariat if you require the consultation translated into the Welsh language.

Next steps

The matter will be programmed in for CPRC consideration following the conclusion of this consultation. You can follow progress by reading the minutes of CPRC meetings here

<https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#minutes>

Data

Data will be handled in line with the CPRC Personal Data Privacy Notice found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707892/cprc-privacy-notice-may-2018.pdf

Civil Procedure Rule Committee

18 July 2025