

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

29th Report of Session 2017–19

Parole Board (Amendment) Rules 2018

**Correspondence: Draft Somerset
West and Taunton (Local
Government Changes) Order 2018**

Includes 4 Information Paragraphs on 5 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Blackstone

Lord Goddard of Stockport

Baroness O'Loan

Lord Chartres

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

Lord Kirkwood of Kirkhope

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hseclegscrutiny@parliament.uk.

Twenty Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Parole Board (Amendment) Rules 2018 (SI 2018/541)

Date laid: 30 April 2018

Parliamentary procedure: negative

Summary: This instrument removes one of the operating Rules of the Parole Board that currently bans the Board from disclosing any information relating to its hearings. The instrument introduces a new Rule that will require the Parole Board, at the Chair's discretion in exceptional circumstances, to share summaries of its reasons for decisions to release or not release an offender with victims and others where a victim has requested this. The instrument is the Government's initial response to a judgment by the High Court which found that the current ban on disclosure violated the principle of open justice and was therefore unlawful. The instrument is to be the first of a number of changes that the Government intend to make to how the Parole Board operates, with the aim of improving transparency and increasing public confidence in the criminal justice system.

This instrument is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

1. The Ministry of Justice (MoJ) has laid these Rules with an Explanatory Memorandum (EM). The instrument will remove the current blanket ban on the disclosure of any information relating to hearings of the Parole Board of England and Wales, as set out in Rule 25 of the Parole Board Rules 2016 (“the 2016 Rules”). The current ban will be substituted with a new Rule that will require the Parole Board, at the Chair's discretion in exceptional circumstances, to share with victims summaries of its reasons for decisions to release, or to not release, an offender where a victim has requested such a summary.
2. The MoJ explains that this instrument is an “initial and urgent” response to the High Court's judgment¹ in the judicial review against the release of John Worboys, who had been convicted of a number of serious sexual offences in 2009. The High Court quashed the Parole Board's decision to release John Worboys and ruled that the current Rule 25 was unlawful because the blanket ban on releasing information about hearings of the Parole Board violated the principle of open justice.

What is being done

3. Section 239 (5) of the Criminal Justice Act 2003 empowers the Secretary of State to make Rules with regard to the proceedings of the Parole Board. This instrument will replace the current Rule 25, by introducing conditions

¹ Courts and Tribunal Judiciary, *The Queen on the application of DSD and NBV & Ors -v- The Parole Board of England and Wales & Ors and John Radford*, 28 March 2018: <https://www.judiciary.gov.uk/judgments/the-queen-on-the-application-of-dsd-and-nbv-ors-v-the-parole-board-of-england-and-wales-ors-and-john-radford/>. [accessed 16 May 2018].

under which information relating to hearings of the Parole Board can be disclosed. It sets out the circumstances in which victims and others can receive summaries of the reasons for decisions by the Parole Board to release or not release an offender.

4. Under the new Rule, the Parole Board must disclose a summary of the reasons for its decision if the Secretary of State/HM Prison and Probation Service notify it of a victim's wish to receive such a summary. The Chair of the Parole Board will have discretion to decide against disclosure if there are exceptional circumstances. According to MoJ such exceptional circumstances could be, for example, where disclosure would put the offender or the good order and discipline of a prison at significant risk, or would compromise an ongoing criminal investigation. In some rare instances, the Parole Board's assessment of risk may be directly related to the health condition of an offender, meaning that to release a summary of a decision to release would require disclosure of sensitive medical information, and would therefore not be appropriate. The MoJ has told us that in such circumstances the reasons for non-disclosure would be provided to the person requesting the summary. If that person did not accept those reasons, and the Chair was not prepared to re-consider the non-disclosure decision, then Judicial Review would be the ultimate mechanism for challenging it.
5. Under the new Rule, the Parole Board will also have to disclose a summary if anyone else requests this, as long as the Chair considers such a disclosure to be justified in the interest of open justice. The Chair may decide to disclose information that goes beyond the summaries of reasons for Parole Board decisions, but this must not include the names of anyone involved in the proceedings other than the offender, so as to protect victims, witnesses and members of the parole panel.
6. The MoJ states in the EM that the policy aim of the Order is to "increase public engagement with, and understanding of, the criminal justice system ... by ensuring the Parole Board of England and Wales is transparent with victims of crime as to the reasons behind [its] decisions, and provides them with the discretion to disclose this information to the media and the public".² The MoJ explains that the rationale behind greater transparency of Parole Board decisions is to help raise public confidence in this part of the criminal justice system.

Consultation

7. Although MoJ did not formally consult on the proposed changes, it carried out a review of the law, policy and procedures relating to Parole Board decisions, with a particular focus on transparency of processes and communication with victims.³ The MoJ says that the review sought views from a wide range of stakeholders, including victims, and that it showed general support for disclosing more information about the reasons for Parole Board decisions, especially to victims. There was also a general consensus that the privacy of victims and the rehabilitation rights of offenders had to be protected, and

2 See: paragraph 7.9 of the Explanatory Memorandum at <http://www.legislation.gov.uk/ukxi/2018/541/memorandum/contents> [accessed 16 May 2018].

3 Ministry of Justice, Review of the law, policy and procedure relating to Parole Board decisions, 28 April 2018: <https://www.gov.uk/government/publications/review-of-the-law-policy-and-procedure-relating-to-parole-board-decisions>. [accessed 16 May 2018].

that the identities of members of the parole panel and those giving evidence at the hearing should not be disclosed.

Further changes

8. This instrument is the first of a number of changes that the Government intend to make in response to the issues raised by the Worboys case. The MoJ has launched a full review of all the 2016 Rules⁴ and is consulting on the operation of a proposed new mechanism that would allow for decisions of the Parole Board regarding the release of an offender to be re-considered.⁵

Conclusion

9. There has been significant public and Parliamentary interest in the role of the Parole Board in the case of John Worboys. It is the Government's declared intention for this instrument, as part of wider changes, to improve the transparency of Parole Board decisions and increase public confidence in the criminal justice system. We draw this instrument to the special attention of the House, as it gives rise to issues of public policy likely to be of interest to the House.

4 The Terms of Reference of the review are available at <https://www.gov.uk/government/publications/review-of-the-parole-board-rules>. [accessed 16 May 2018].

5 Ministry of Justice, Reconsideration of Parole Board decisions: Creating a new and open system, 28 April 2018: <https://www.gov.uk/government/consultations/reconsideration-of-parole-board-decisions-creating-a-new-and-open-system>. [accessed 16 May 2018].

CORRESPONDENCE

Draft Somerset West and Taunton (Local Government Changes) Order 2018

Draft Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018

10. These instruments provide for the abolition of West Somerset and Taunton Deane councils, to be replaced by a single Somerset West and Taunton District Council. In our 26th Report of this Session,⁶ we drew the instruments to the House's attention, on the ground that there appeared to be inadequacies in the consultation process which related to them.
11. We subsequently received representations about the merger proposals from Ms S Levinge, who raised issues on which we sought comments from the Ministry of Housing, Communities and Local Government (MHCLG). We are publishing Ms Levinge's representations, and MHCLG's response, on our website.⁷

⁶ [26th Report](#), Session 2017-19 (HL Paper 125).

⁷ See: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 16 May 2018].

INSTRUMENTS OF INTEREST

Draft Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018

Draft Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2018

12. These draft Regulations have been laid by the Ministry of Housing, Communities and Local Government (MHCLG). They make it mandatory for letting and managing agents in the private rented sector to be members of an approved Client Money Protection (CMP) scheme. The aim is to ensure that any money held by an agent on behalf of a tenant or landlord is protected, and that the tenant or landlord can be reimbursed if the agent goes bankrupt or commits fraud. The industry estimates that letting agents currently hold approximately £2.7 billion on the behalf of tenants or landlords, including rent payments or money to pay for repairs and maintenance. While membership of a CMP scheme is not mandatory at present, the industry estimates that around 60% of agents are already members of such a scheme.⁸ According to MHCLG, the draft Regulations implement the recommendation of a review chaired by Baroness Hayter and Lord Palmer of Childs Hill into the operation of CMP schemes in the lettings sector. The review concluded that membership of a Government approved or designated scheme should be made mandatory. The draft Regulations also set out requirements for approved CMP schemes and enable the Secretary of State to designate a Government-administered CMP scheme should the markets fail to provide such schemes at any point in the future.

Terrorism Act 2000 (Enforcement in Different Parts of the United Kingdom) Order 2018 (SI 2018/521)

13. This Order closes a legislative gap that the Home Office has identified in relation to the investigation of terrorist financing. The instrument makes investigative powers that have been ordered by a court under the Terrorism 2000 Act (TACT) to investigate terrorist financing, inter-operable in the UK's three legal jurisdictions (England and Wales, Scotland or Northern Ireland). This will enable those who are carrying out an investigation in one jurisdiction, to easily obtain information or evidence from another jurisdiction. While inter-operability between jurisdictions currently exists with regard to some orders made under TACT, such as restraint orders, there are no provisions for it in relation to terrorist financing. The Home Office explains that the Order addresses this legislative gap, and brings the application of the terrorism investigation powers under TACT in line with the equivalent criminal investigation powers under the Proceeds of Crime Act 2002. The Home Office says that this will ensure clarity and consistency across both the terrorist and criminal financing asset recovery regimes.

Children's Homes (England) (Amendment) Regulations 2018 (SI 2018/540)

14. These Regulations will enable secure schools that are set up as academies to be approved as secure children's homes, so that they can provide accommodation for children who are serving a custodial sentence. The

⁸ Department for Communities and Local Government, *Client Money Protection*, March 2017: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/603365/Client_Money_Protection_Working_Group_Report.pdf [accessed 16 May 2018].

Ministry of Justice (MoJ) says that this change reflects a shift in the ethos of how children and young people are cared for while in custody. According to MoJ, the average size of the young custodial population has fallen significantly over the last decade, from over 3,000 young people in 2006/07, to fewer than 1,000 in 2016/17, but those young people who remain in custody are often challenging and have complex needs. A lack of educational attainment, substance misuse, self-harm and suicide, mental health issues and learning difficulties are particular concerns. The MoJ explains that these complex needs are better met in more child and education focused settings and that the Government intends to replace all Young Offender Institutions and Secure Training Centres with secure schools. This instrument aims to facilitate the setting up of secure schools which are registered as both a 16 to 19 academy and a secure children's home, in support of the intended shift towards a more child-centred and education-focussed custodial provision.

Prison and Young Offender Institution (Amendment) Rules 2018 (SI 2018/549)

15. This instrument will enable governors of prisons and young offender institutions to introduce their own local privilege policies without approval by a senior official on behalf of the Secretary of State. Privilege policies aim to encourage prisoners to take an active part in their rehabilitation by rewarding them for positive and responsible behaviour with privileges, such as giving them extra time to spend outside their cells. The Ministry of Justice (MoJ) explains that while governors will need to adhere to the 2013 Prison Service Instructions (PSI) which set out minimum standards for local policies on incentives and earned privileges, the new rules will give them greater flexibility and authority over how incentives are used in their prisons. The MoJ is currently reviewing the PSI, with a view to replacing them with a new Policy Framework that will give more authority to governors. The MoJ says that these new Rules on local privilege policies are in line with the approach that will be taken for the new Framework. As part of the Government's commitment to make the entire closed prison estate non-smoking, the Rules also remove tobacco as a privilege for prisoners, and add matches, lighters, e-cigarettes and vaping devices to the list of articles that may attract a fine if brought into prison without authorisation. The MoJ explains that this is to address health and safety concerns and deter offenders from trying to profit from smuggling them into prison in order to circumvent the smoking ban.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Client Money Protection Schemes for Property Agents
(Approval and Designation of Schemes) Regulations 2018

Client Money Protection Schemes for Property Agents
(Requirement to Belong to a Scheme etc.) Regulations 2018

Electronic Presentment of Instruments (Evidence of Payment
and Compensation for Loss) Regulations 2018

Scotland Act 2016 and Wales Act 2017 (Onshore Petroleum)
(Consequential Amendments) Regulations 2018

Draft instruments subject to annulment

Torbay (Electoral Changes) Order 2018

Cheshire West and Chester (Electoral Changes) Order 2018

Instruments subject to annulment

SI 2018/521 Terrorism Act 2000 (Enforcement in Different Parts of the
United Kingdom) Order 2018

SI 2018/522 Registration (Entries of Overseas Births and Deaths)
(Amendment) Order 2018

SI 2018/537 Public Service (Civil Servants and Others) Pensions
(Amendment) Regulations 2018

SI 2018/539 Burma (European Union Financial Sanctions) Regulations
2018

SI 2018/540 Children's Homes (England) (Amendment) Regulations 2018

SI 2018/546 Insurance Distribution (Regulated Activities and
Miscellaneous Amendments) Order 2018

SI 2018/549 Prison and Young Offender Institution (Amendment) Rules
2018

SI 2018/553 Rating Lists (Valuation Date) (England) Order 2018

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 15 May 2018, Members declared the following interests:

Parole Board (Amendment) Rules 2018 (SI 2018/541)

Baroness Finn

Knows one of the victims who brought the action

Attendance:

The meeting was attended by Lord Chartres, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Kirkwood of Kirkhope, Lord Sherbourne of Didsbury and Lord Trefgarne.