



**THE CRIMINAL BAR ASSOCIATION**

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Response to Consultation on Proposed Amendment of the Parole Board Rules 2004

(as amended by the Parole Board Rules 2009)

INTRODUCTION

1. The Criminal Bar Association (“CBA”) represents about 3,600 employed and self-employed members of the Bar who appear to prosecute and defend the most serious criminal cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts. Many of our members have appeared to represent prisoners at Parole Board Hearings. We welcome the opportunity to provide a response to this consultation.
2. The proposed amendments to the Parole Board Rules, as set in the letter from the Ministry of Justice dated 21<sup>st</sup> March 2011, are:
  - a. To enable the Parole Board, by amendment of Rule 18(1) to direct that an oral hearing is to take place by means of a video link or any other means of electronic communication, such as telephone conference calls, between the oral hearing panel and other parties and/or witnesses;

- b. To specify, by amendment of Rule 6 of the Parole Board Rules, that when an application by the Secretary of State for material to be withheld from the prisoner (pursuant to Rule 6(2)) is rejected, the Secretary of State will have the right to withdraw the material at any point in the process should he consider it necessary to do so; in which case no-one who has seen the withdrawn material will sit on the panel to consider the prisoner's application;
- c. To provide, by further amendment of Rule 6, an explicit power for the Parole Board to apply to the Attorney General to appoint a Special Advocate in the event that
  - (i) the Secretary of State applies under Rule 6(2) to withhold material from the prisoner; and
  - (ii) the panel chair directs that the information should be withheld, but considers that procedural fairness requires the participation of a special advocate;
- d. To extend, by amendment of Rule 2(1) of the Parole Board Rules, the remit of the Rules to include cases referred to the Board by the Secretary of State pursuant to Section 35(1) of the Criminal Justice Act 1991 and Sections 255B(4), 255C(4) and 255D(1) of the Criminal Justice Act 2003 (as amended by the Criminal Justice and Immigration Act 2008) and Section 239 Criminal Justice Act 2003 for specific relevant Rules as appropriate.

### SUMMARY

- 3. The CBA is broadly supportive of the proposed changes to the Parole Board Rules. We believe that the implementation of these amendments is likely to go some way to achieving the expressed goal of improving the timely and efficient review of cases referred to the Parole Board.

### SUBMISSIONS

- 4. Our specific responses to the various proposals are as set out below.

## **Electronic Media**

5. The CBA is broadly supportive of the use of electronic media in any proceedings. If they are well deployed, electronic media can be very valuable in reducing the cost and inconvenience of proceedings. But if they are not well deployed, they can have quite the opposite effect. In order for the electronic media to work efficiently and effectively in the context of Parole Board Hearings, we believe that it is vital that:
  - (i) Rule 6 dossiers are completed and served well before the hearing. The experience of lawyers working in this area is that directions from the Parole Board as to the service of dossiers are frequently not complied with. The timely service of dossiers will be extremely important under the new proposals. Dossiers are currently often served at the oral hearing. If the prisoner is in a different location to the Parole Board and the Parole Board has the dossier but the prisoner does not, there is a real danger that the hearing will have to be substantially delayed or adjourned. That will defeat the object of the proposed changes.
  - (ii) the quality and reliability of the technology to be deployed is of the highest standard if the hearing is to be fair and just. Plainly, it is of central importance that the prisoner and his representative are able to adequately view the reactions of the Parole Board to the evidence of witnesses (including that of the prisoner) during the hearing. Moreover, the prisoner and his representative must be able to view and assess for themselves the evidence of all witnesses. In addition, if electronic media unexpectedly fail, that failure can be enormously disruptive to the quality of a hearing.

## **Sensitive Material**

6. The CBA supports the proposed means of dealing with sensitive material. Whilst PSI 62/2010 makes clear that, in the interests of fairness, the presumption must always be in favour of disclosing all available information relevant to release or recall, the CBA recognises that circumstances may arise where the presumption must give way to other interests such as those of national security.
7. If Parole Board members were to view sensitive material and decide that it should be disclosed, but continue to be a part of the adjudication of the prisoner's application when the Secretary of State had withdrawn the material, we believe that that could lead to

unfairness. The proposal that no member of the Parole Board who has seen the withdrawn material should continue to sit to consider the prisoner's application is therefore essential and welcome.

### **Special Advocates**

8. The CBA supports the appropriate use of Special Advocates. We believe that the proposed change will merely formalise that which is already allowed.
9. However, we note that there are no clear procedural rules to govern the use of Special Advocates in the context of Parole Board hearings. Such rules might address, for example, whether there should be contact between the Special Advocate and the prisoner after the Special Advocate has seen the withheld material. We therefore suggest that the assistance of the Special Advocates' Support Office be sought in drawing up appropriate rules of procedure.

### **Referrals to the Parole Board**

10. The CBA is supportive of this amendment.

**The Criminal Bar Association**

**June 2011**