



Equality Statement

Policy Summary

The consultation sets out the question of whether Parole Board decision making should be open to reconsideration. This consultation seeks views on the introduction of and design principles of such a mechanism.

The consultation considers:

- a. the types of decision to be reconsidered,
- b. who can apply for reconsideration of a decision,
- c. the threshold that must be met for a decision to be reconsidered, and
- d. how we can make the reconsideration process transparent, whilst also ensuring there are sufficient safeguards in place. It is our intention that this is as open and transparent as possible.

This Equality Statement accompanies the Parole Board reconsideration consultation paper and Impact Assessment. It is helpful to consider the issues this paper covers alongside these two papers. We will update our equality considerations once we have received responses from the consultation exercise.

Equality Duties

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be proportionately considered against the nine "protected characteristics" under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Equality Considerations

Direct discrimination

Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that 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.

Indirect discrimination

Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.

Our initial assessment is that the proposals on a mechanism for reconsidering Parole Board decisions are not indirectly discriminatory as we believe they do not put people with protected characteristics at a particular disadvantage when compared to others who do not share those characteristics.

However, we recognise that people with certain protected characteristics are overrepresented amongst those who attend parole hearings when compared to the general population. However, as is the case more generally across England and Wales, there is overrepresentation of certain people in the criminal justice system with protected characteristics. Groups overrepresented in the prison population are as follows¹:

- Those who are male
- Those aged between 18 and 39
- Those with a disability
- Those with a Black or Black British ethnicity, or from a mixed ethnic group
- Those who are Muslim

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.²

¹ See Prison Population December 2017, *Offender Management statistics quarterly: July to September 2017*, accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676246/prison-population-q4-2017.xlsx. 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 (96.77% of life and IPP prisoners as opposed to 95.36% of the total prison population, see *ibid.* tables 1.1 and 1.9a.) Information about other protected characteristics is not available for this subset of prisoners.

² 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 and *Sexual Identity: UK, 2016*, accessed at <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualidentityuk/2016>

If the policy could be shown to place these groups at a disadvantage, we believe it is a proportionate approach to achieve a legitimate aim. Broadly, we believe the principles of open justice, access to justice and the public interest justify the changes outlined but that they are appropriately balanced against consideration of and protections for individual privacy, personal risk and rehabilitation.

With respect to the outcome of Parole Board hearings, 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 hearings³. Should this likelihood maintain for cases that are to be reconsidered, this may compound the adverse situation that is already present for those from non-White ethnic groups. There is a tension here. Those from non-White ethnic groups are overrepresented in the prison population. Therefore, any positive impact of the reconsideration mechanism recommendation is to their advantage. However, in terms of the operation of that mechanism, non-White offenders may be proportionately less advantaged than their White peers. On balance, we consider that the recommendation will have a net-positive impact on non-White offenders.

Advancing equality of opportunity

It is expected that these proposals will benefit victims by improving their access to justice and giving them extra assurance that there is a mechanism in place more easily to reconsider Parole Board decisions. This would be especially the case if victims were granted standing to prompt a reconsideration.

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider that any adjustments are required for disabled people over and above the ones already in place in the statutory duties of the Parole Board and prisons. When disseminating information, prisons and the Parole Board should take into account disability, numeracy and literacy issues, and communication and learning difficulties.

Fostering good relations

We do not consider that there is any significant impact on the achievement of this objective.

³ For review cases in 2016/17, 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