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|--|--|--|--|-------------------------|
| <b>Title:</b> The Police, Crime, Sentencing and Courts Act 2022:<br>Overarching Criminal Law IA<br><br><b>IA No:</b> MoJ077/2020<br><br><b>RPC Reference No:</b> N/A<br><br><b>Lead department or agency:</b> Ministry of Justice (MoJ)<br><b>Other departments or agencies:</b> Home Office | <b>Impact Assessment (IA)</b>                                |  |  |                         |
|  | <b>Date:</b> 28/04/2022                                      |  |  |                         |
|  | <b>Stage:</b> Final  |  |  |                         |
|  | <b>Source of intervention:</b> Domestic                      |  |  |                         |
|  | <b>Type of measure:</b> Primary legislation                  |  |  |                         |
|  | <b>Contact for enquiries:</b><br>Katie.Dougal@justice.gov.uk |  |  |                         |
| <b>Summary: Intervention and Options</b>   |  |  |  | <b>RPC Opinion:</b> N/A |

| Cost of Preferred (or more likely) Option (in 2021/22 prices) |                            |                               |                               |
|---|----------------------------|-------------------------------|-------------------------------|
| Total Net Present Social Value                                | Business Net Present Value | Net cost to business per year | Business Impact Target Status |
| -£33.4m   | N/A                        | N/A                           | Not a regulatory provision    |

**What is the problem under consideration? Why is government action or intervention necessary?**

Current legislation states that where the value of criminal damage to statues and memorials is £5,000 or less, the maximum penalty is a custodial sentence of three months, which does not reflect the severity or harm caused by the crime. Likewise, the maximum penalties currently available for offences of child cruelty do not reflect the severity of the harm caused in the most extreme cases. The current positions of trust offences legislation does not protect many 16 and 17 year olds from exploitation by adults undertaking certain activities in sports or religious settings, and does not allow the government to update the list of roles included as positions of trust efficiently. Meanwhile, the current time limit of six months from the date of the offence for prosecuting common assault or battery cases involving domestic abuse unfairly prevents some victims from seeking justice, as domestic abuse-related crime is often reported later than other types. The Police, Crime, Sentencing and Courts Act (PCSC Act) will ensure that, in each case, the relevant legislation is amended to provide greater public protection and confidence. Government action is necessary in each of these instances as making the required amendments requires primary legislation.

**What are the policy objectives of the action or intervention and the intended effects?**

On criminal damage to memorials, the policy objective is to amend the Magistrates' Courts Act 1980 to remove consideration of the monetary value with respect to criminal damage to memorials which would otherwise limit the court's sentencing powers. In cases where damage to a memorial is worth £5,000 or less, these would no longer be treated as summary only offences but would be triable either way – and be subject to the maximum penalty for criminal damage of 10 years. The positions of trust policy objective is to extend protection by creating further positions of trust within the Sexual Offences Act 2003 within sports and religious settings to ensure adults undertaking certain activities can be prosecuted if they engage in sexual activity with 16-18 year olds. We are introducing a clause which creates new offences of recording images of, or otherwise observing, a person at a time when they are breast-feeding without their consent or a reasonable belief that they consent. To be guilty of the offence the perpetrator must be acting for the purpose of obtaining sexual gratification or of humiliating, alarming or distressing the victim in order to protect breastfeeding parents from harmful behaviour. Our policy objective in extending the time limit for bringing prosecutions in domestic abuse-related common assault or battery cases is to ensure that victims are not unfairly prevented from seeking justice, and that perpetrators cannot evade prosecution because of a time limit which is too short in this context, given the time it can understandably take for domestic abuse to be reported to the police.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- Option 0 – Do nothing. Retain the current sentencing framework and provisions available for sentencing offenders.
- Option 1 – Implement the PSCS Act criminal law measures.

The government's preferred approach is option 1 as this best meets the policy objectives.

|  |  |          |             |           |                 |
|--|--|----------|-------------|-----------|-----------------|
| <b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> No set date.           |  |          |             |           |                 |
| Does implementation go beyond minimum EU requirements?   |  |          | N/A         |           |                 |
| Is this measure likely to impact on international trade and investment?  |  |          | No          |           |                 |
| Are any of these organisations in scope?   |  | Micro No | Small No    | Medium No | Large No        |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) |  |          | Traded: N/A |           | Non-traded: N/A |

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

# Summary: Analysis & Evidence

# Policy Option 1

Description: Implement the PCSC Act measures for criminal law

## FULL ECONOMIC ASSESSMENT

| Price Base Year 2021/22 | PV Base Year 2021/22 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |               |                        |
|-------------------------|----------------------|----------------------|---------------------------------------|---------------|------------------------|
|                         |                      |                      | Low: -£22.2m                          | High: -£48.3m | Best Estimate: -£33.4m |

| COSTS (£m)    | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low           | £3.6m                                   | £3.7m  | £27.2m                     |
| High          | £9.3m                                   | £5.8m  | £48.3m                     |
| Best Estimate | £5.1m                                   | £4.4m  | £33.4m                     |

### Description and scale of key monetised costs by 'main affected groups'

The main monetised costs of Option 1 are as follows:

- Prison Services: an estimated 20 prison places resulting in an estimated £1.3m running costs per annum; estimated one-off construction costs of £5.1m.
- Probation Services: estimated £0.2m per annum from higher number of community and suspended sentences.
- HM Courts and Tribunals Service (HMCTS): £0.5m per annum from higher caseloads and higher proportion of trials in Crown Courts.
- Legal Aid Agency: £0.2m per annum from higher caseloads and higher proportion of trials in Crown Courts.

### Other key non-monetised costs by 'main affected groups'

- There may be some one-off transitional costs for HMCTS and the Sentencing Council associated with the preparation of new guidance and training material.
- There may be increased costs to other government departments for providing therapeutic support such as substance misuse treatment and/or increased adjudication costs.
- The Crown Prosecution Service may experience higher costs due to more cases being tried in Crown Court.
- The Home Office may have increased costs from monitoring more offenders on the Sex Offenders Register.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low           | N/A                                     | N/A  | N/A                           |
| High          | N/A                                     | N/A  | N/A                           |
| Best Estimate | N/A                                     | N/A  | N/A                           |

### Description and scale of key monetised benefits by 'main affected groups' N/A

### Other key non-monetised benefits by 'main affected groups'

Not all non-monetised benefits could be listed here due to space. The key non-monetised benefits are:

- Increased confidence in the criminal justice system and protection for the public, reduced maintenance for those charged with maintaining memorials, increased protection of children from abuse, young people protected from sexual exploitation and the judiciary.
- There may be greater public protection from a potential decrease in offences due to the deterrent effect of these measures, although evidence on the existence and size of deterrent effects is weak.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.50%

- The implementation date is Spring 2022.
- Future estimated volumes are based on MoJ published statistics and the proxy offence of racially or religiously aggravated criminal damage.
- Any additional prison places will incur an annual running cost of £48,672 in England and Wales (excluding optimism bias, in 21/22 prices).
- Any additional prison capacity required will be met through construction in Year 1 after policy implementation at a cost of £250,000 per place.
- Optimism bias of 20% has been applied to all costs (unless otherwise stated).

### BUSINESS ASSESSMENT (Option 1)

|  |               |          |   |
|--|---------------|----------|---|
| Direct impact on business (Equivalent Annual) £m: None |               |          | Score for Business Impact Target (qualifying provisions only) £m: N/A |
| Costs: N/A   | Benefits: N/A | Net: N/A |   |

## A. Background

1. The Police, Crime, Sentencing and Courts (PCSC) Act) includes reforms to ensure the sentence fits the crime thereby providing greater public protection and confidence. This overarching criminal law Impact Assessment (OIA) assesses two measures where the government believes that existing legislation is not sufficient to meet the needs of the public and the criminal justice system (CJS). These are:
  - The current legislation on the desecration of statues and war memorials means sentencing for damage worth £5000 and under does not reflect the severity of the crime or the harm caused.
  - The current maximum penalties for offences of child cruelty do not reflect the severity of the harm caused in the most extreme cases.
  - The current list of positions of trust offences fail to offer sufficient protection to 16 and 17 year olds from sexual exploitation where such abuse occurs within a sports or religious setting.
  - The time limit to bring a prosecution in common assault or battery cases is currently six months from the offence occurring. However, we know that in domestic abuse cases, it may understandably take victims some time to come forward and report a crime to the police.
  - Taking photographs of women breastfeeding without their consent is, in some circumstances, captured by a range of existing offences, including public order offences, harassment/stalking and outraging public decency. However, recent cases have shown that the police and CPS are not always able to use the existing law to tackle this intrusive behaviour.
2. The rest of this OIA explains the problems at hand, the underpinning rationale for government intervention and the associated policy objectives and describes the key stakeholders who would be affected. It then provides an overview of the impact of each of the proposals on society, including both the monetised and non-monetised impacts.

### *Criminal Damage to Memorials*

3. Demonstrations in the summer of 2020 saw protesters targeting statues, including war memorials and other commemorations of cultural significance, which sparked significant interest in the topic in the House of Commons. It has long been considered that the law is not sufficiently robust in this area as, while incidences of damage to and desecration of statues and war memorials are typically of low monetary value, they very often carry a high sentimental and emotional impact. Historical data from the War Memorials Trust indicate that from 2007 to 2017 an average of 12 war memorials per year were vandalised.<sup>1</sup>
4. On 23 June 2020, MPs asked the government to support a new Desecration of War Memorials Bill intended to introduce a new and specific offence where a person destroys, damages or otherwise desecrates a war memorial. The MPs expressed concern that when damage to a war memorial amounts to £5,000 or less, the maximum sentence is three months imprisonment, which they say does not reflect the severity of the crime or the distress caused to the public at large.
5. As a result, the government has decided to introduce, as part of the PCSC Act, an amendment to the Magistrates' Courts Act 1980 to remove consideration of monetary value with respect to criminal damage to statues and war memorials which would otherwise, in some cases, determine whether the case is heard in the magistrates or crown court and so limit the court's sentencing powers. As the law currently stands, courts are obliged to try such cases summarily where the value of damage was assessed as being worth less than £5,000, which meant the full range of sentencing powers were not available.
6. These changes will ensure that where statues and war memorials are damaged or desecrated the courts are able to sentence appropriately at every level for this offending.

### *Child cruelty*

7. Currently, section 1 of the Children and Young Persons Act 1933 provides that the maximum penalty for cruelty to a person under 16 is 10 years' imprisonment; and section 5 of the Domestic Violence,

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<sup>1</sup> Source: War Memorials Trust, 2017: War Memorials Trust reports on cases of theft and vandalism to war memorials (<http://www.warmemorials.org/uploads/publications/623.pdf>)

Crime and Victims Act 2004 provides that the maximum penalty causing or allowing a child or vulnerable adult to suffer serious physical harm is 10 years' imprisonment and the maximum penalty for causing or allowing a child or vulnerable adult to die is 14 years' imprisonment.

8. Since 2016 MPs have, on several occasions, asked the government to consider raising the maximum penalties for these offences amid concerns that they are insufficient to reflect the severity of the harm caused in extreme cases. In July 2021, in response to Tom Tugendhat MP raising the issue at Commons Report stage of the PCSC Act, the government undertook to consider it and to bring forward proposals for reform as soon as possible.
9. Following such consideration, the government decided to introduce amendments to the PCSC Act, to increase the maximum penalties for:
  - cruelty to a person under 16 from 10 years' imprisonment to 14 years' imprisonment;
  - causing or allowing a child or vulnerable adult to suffer serious physical harm from 10 years' imprisonment to 14 years' imprisonment; and
  - causing or allowing a child or vulnerable adult to die from 14 years' imprisonment to life imprisonment.
10. These changes will ensure that the courts have the fullest range of sentencing powers available to deal appropriately with those who abuse children.

#### *Positions of Trust*

11. Where a person older than 18 is in a specified position of trust, it is an offence for them to have any sexual activity with a person under the age of 18, even if the relationship is consensual. Current positions of trust offences include teachers, care workers, youth justice workers, among others, and cover settings such as schools, hospitals and residential care homes. The law intends to protect 16 and 17 year olds from exploitation by an adult in a position to do so.
12. The definition of a position of trust is drawn in a measured way to recognise the need to balance the legal right to consent to sexual activity by those aged 16 and over with the desire to protect young people from manipulation, exploitation and abuse.
13. The Ministry of Justice, working closely with other government departments, carried out a review of current positions of trust offences in ss16-19 of the Sexual Offences Act 2003, launched in spring 2019, to ensure that existing offences are being used appropriately and effectively, and that those working with young people understand their responsibilities and need to act appropriately.
14. Our review allowed us to test how effectively the current law is working and how well it is understood. It also allowed us to engage with organisations that work with young people across a range of sectors to understand their concerns and ensure that the right measures are in place to protect young people from inappropriate behaviour.
15. The review of positions of trust offences found significant gaps in protections offered to young persons. The current positions of trust offences are targeted at situations where the child has some dependency on the adult involved, often combined with an element of vulnerability of the child. They are directed at those who are employed to look after persons under the age of 18, for example those providing care for a child in a residential care home, hospital or educational institution. The offences deliberately do not cover all posts in which a person might have contact with, or a supervisory role of, a child aged under 18. Our review found that the current laws are failing young persons who have ultimately been abused by adults on whom they are dependent and in situations where they could be considered vulnerable.
16. The review found that this was particularly the case for sports coaches and religious/faith leaders. Sports coaches have, unlike many other roles, the opportunity to physically touch the young people in their care. Likewise, they can spend time, including overnight stays, with those in their care, and can have a very powerful influence over a young person's future in the sport. We also found that religious

leaders are in a strong position of trust because of their centrality to the life not just of a young person, but of that person's whole family and community.

17. We recognise, however, that there are other roles which may be exploited in this way, which is why we will make it easier for the government to add further roles by secondary legislation if evidence suggests this is needed in the future.
18. Additionally, evidence from an academic study<sup>2</sup> reported that between 2014 and 2018, authorities were made aware of more than 650 cases of sexual activity by an individual who was potentially in a position of trust with a young adult aged 16-18. Of these 650 cases, more than 150 related to an abuse of trust in a sports coaching context and around 70 were in a faith context. This study has provided previously unknown information on the scale of the issue and highlighted the shortcomings of the current legislative framework.
19. Based on this evidence, ministers have therefore decided to expand protection by creating further "positions of trust" which would cover sports coaches and leaders in religious settings and also other roles within sports and religious settings, and also to create a provision which would allow any future government to add further positions of trust where the evidence shows it is necessary to do so.

### *Domestic Abuse Prosecution Time Limits*

20. The time limit to bring a prosecution in common assault or battery cases is currently six months from the offence occurring. However, we know that in domestic abuse cases, it may understandably take victims some time to come forward and report a crime to the police. This has led to common assault or battery cases involving domestic abuse being disproportionately likely to time out. On some occasions offences are not reported until such a time that the police or Crown Prosecution Service do not have time to complete their consideration of the case, or even not reported to the police at all until after the time limit has expired. This unfairly prevents some victims of domestic abuse from seeking the justice they deserve and allows perpetrators to evade prosecution.
21. The Government has considered this issue in the light of concerns raised during the passage of the Act and has decided to lengthen the time limit for bringing prosecutions to give victims more time to come forward and seek justice.

### *Breastfeeding Voyeurism*

22. Taking photographs of women breastfeeding without their consent is, in some circumstances, captured by a range of existing offences, including public order offences, harassment/stalking and outraging public decency. However, recent cases have shown that the police and CPS are not always able to use the existing law to tackle this intrusive behaviour. Following several high-profile instances, there have been calls to create a specific offence of photographing a person breastfeeding without their consent, and opposition amendments have been tabled to the PCSC Act in both Commons and Lords to create such an offence.
23. The Law Commission is currently carrying out a review of the law on Taking, Making and Sharing Intimate Images without consent. The Commission consulted on proposals earlier this year and is aiming to report its recommendations in June 2022. The review is looking at a range of behaviour including taking a photo without consent of someone breastfeeding in a public place.
24. In light of concerns expressed during the passage of the Act, the government has decided to use this legislative opportunity to create offences to tackle this behaviour, ahead of the Law Commission's wider proposals on intimate image offences.

## **B. Rationale and Policy Objectives**

25. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in

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<sup>2</sup> Source: All-Party Parliamentary Group, 2019: Positions of Trust: It's time to change the law. (<https://www.iicsa.org.uk/key-documents/19087/view/THO000080.pdf>)

existing government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).

26. In this instance, the overarching rationale for intervention are equity and efficiency: the measures outlined in this OIA will reform the criminal law in ways that will provide greater public protection, increased public confidence, deter crime, and ensure that sentencers have the tools available to reflect the impact of the crime.

27. The policy objectives are:

- To introduce an amendment to the Magistrates Courts Act 1980 to remove the £5000 summary trial cap in relation to criminal damage to memorials offences and to enable the courts to have the full range of sentencing options with regards to this type of offending.
- To amend section 1 of the Children and Young Persons Act 1933 and section 5 of the Domestic Violence, Crime and Victims Act 2004 to increase the maximum penalties currently available for the offences of cruelty to a person under 16 and causing or allowing a child or vulnerable adult to die or suffer serious physical harm.
- To extend protection by creating further “positions of trust” within sports and religious settings, and to create a provision which allows a future government to add further positions of trust.
- To ensure that domestic abuse victims are able to seek justice in common assault or domestic abuse cases and are not unfairly prevented from doing so by the time limit on bringing prosecutions.
- To protect breastfeeding parents and children from harassment and abuse by criminalising the non-consensual taking of photographs of people breastfeeding.

## C. Affected Stakeholder Groups, Organisations and Sectors

28. A list of the main groups and stakeholders who would be affected by the measures described in this OIA is shown below:

- Individuals and organisations responsible for the upkeep and care of memorials and/or members of the public otherwise affected by the occurrence of these crimes
- Victims of sexual exploitation and their families or other members of the public affected by the occurrence of these crimes
- Offenders and their families
- HM Prison and Probation Service (HMPPS), including the Prison Service and the National Probation Service
- HM Courts and Tribunal Service (HMCTS)
- Legal Aid Agency (LAA)
- Crown Prosecution Service (CPS)
- Electronic Monitoring Service (EMS)
- Sentencing Council
- Police
- Other government departments supplying services

## D. Description of Proposed Measures

29. To meet the government’s policy objectives, this IA assesses the following options:

- **Option 0: Do nothing: Make no changes to the current sentencing framework**
- **Option 1: Implement the PSCS Act criminal law measures, namely:**
  - a) **Amend the Magistrates’ Courts Act 1980 to remove consideration of monetary value with respect to criminal damage to memorials, effectively increasing the maximum sentence to 10 years where damage is less than £5000.**
  - b) **Amend the Children and Young Persons Act 1933 and the Domestic Violence, Crime and Victims Act 2004 to increase the maximum penalties for cruelty to a person under 16 and causing or allowing a child or vulnerable adult to suffer serious physical harm from 10 to**

- 14 years' imprisonment; and the maximum penalty for causing or allowing a child or vulnerable adult to die from 14 years' imprisonment to life imprisonment.
- c) Expand positions of trust offences to cover sports and religious settings and allow the flexibility to add new positions of trust offences in future.
- d) Extend the time limit for bringing a prosecution in common assault or battery cases involving domestic abuse.
- e) Create two new criminal offences covering the recording of an image of a person breastfeeding, without that person's consent, or operating equipment to observe a person breastfeeding without their consent.

30. Option 1 is the preferred option as it best meets the government's policy objectives.

#### Option 0

31. Under this option, no changes would be made to the current sentencing framework. As a result, the various problems identified above would remain.

#### Option 1

32. Option 1 implements the PCSC Act Criminal law measures, namely:

- a. **Criminal damage to memorials:** This measure introduces an amendment to the Magistrates' Courts Act 1980, to ensure that where memorials are damaged or desecrated, the case can be tried as an either way offence regardless of the monetary value of the damage. In low value cases the courts are no longer bound by a three-month maximum penalty – but in all cases of criminal damage to a memorial the offence is subject to the ten-year maximum penalty for criminal damage, ensuring that sentences reflect the seriousness and harm caused by the crime
- b. **Child cruelty:** This measure amends section 1 of the Children and Young Persons Act 1933 and section 5 of the Domestic Violence, Crime and Victims Act 2004 to increase the maximum penalties available for the offences of cruelty to a person under 16 and causing or allowing a child or vulnerable adult to die or suffer serious physical harm. This will ensure that the courts have the fullest range of sentencing powers available to deal appropriately with those who abuse children.
- c. **Positions of trust:** This measure creates further positions of trust offences within sports and religious settings, thereby filling a gap in the law and providing greater protection to young people from manipulation and sexual abuse and exploitation. It also gives the flexibility to add new positions of trust offences in future.
- d. **DA Prosecution Time Limits:** This measure extends the time limit for bringing a prosecution in common assault or battery cases involving domestic abuse. Currently under section 127 of the Magistrates Court Act 1980 a prosecution must commence within six months of the offence occurring. The new provision disapplies that time limit through the insertion of a new section 39A into the Criminal Justice Act 1988. This extends the time limit so that a prosecution must be brought within six months of an offence being formally reported to the police through either a witness statement or a video recording made with a view to its use as evidence, within an overall window of two years of the offence.
- e. **Breastfeeding Voyeurism:** This measure creates two new criminal offences covering the recording of an image of a person breastfeeding, without that person's consent, or operating equipment to observe a person breastfeeding without their consent. In both instances, to be captured by the offence the purpose of the act must be to cause that person humiliation, alarm or distress, or for sexual gratification either of the offender or another. The new offences would attract the same ancillary orders and further requirements (such as notification requirements) as the current voyeurism offences at s67 and s67A SOA 2003.

## E. Cost and Benefit Analysis

33. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

34. This IA summarises the main monetised and non-monetised impacts of the above legislative measures on individuals and groups in the UK. The costs and benefits of each legislative measure are compared to the “do nothing” option. IAs place a strong emphasis on valuing costs and benefits in monetary terms. However, there are often important aspects of a policy that cannot readily be monetised – e.g. the effects on groups in society or changes in equity and fairness.
35. We have adopted the following conventions in this IA:
- Monetised costs and benefits are stated in 2021/22 prices;
  - The Net Present Value (NPV) of each measure has been calculated for a ten-year period starting in April 2021 using a 3.5 per cent discount rate; the implementation date assumed for reforms is May 2022;
  - Prison population volumes greater than 100 have been rounded to the nearest 50, volumes less than 100 have been rounded to the nearest 5.
  - Where appropriate, 20% optimism bias has been applied to costs;
  - Unless otherwise stated, the annualised costs or savings are those which would be achieved in ‘steady state’ (i.e. when the measure is fully in operation). Under Option 1, steady state is achieved in 2022/23, or Year 2 after policy implementation.
36. Low, best (or central) and high estimates are provided to better understand the types of uncertainties present in the measures. Low scenarios represent variation in modelling assumptions which result in the least overall NPV for the specific profiled policy, while high scenarios represent assumption variations yielding the highest NPV. For criminal damage to memorials, the low scenario is based on 10 in scope convictions per annum, while the high scenario is based on 60 convictions per annum. For positions of trust the low scenario is based on 15 additional convictions, while the high scenario is based on 55 convictions per annum. The best estimate is based on the mid-point for both policies.

### **Option 1: Implement the PCSC Act Criminal Law measures.**

#### **Costs of Option 1**

#### **Measure 1(a): Criminal Damage to Memorials**

#### **Costs of Measure 1(a)**

##### Monetised Costs

##### *HM Prison and Probation Service*

36. Measure 1(a) is estimated to lead to additional costs to the probation service of between £0.03m and £0.2m per annum, with a best estimate of £0.09m per annum. These costs are driven by the higher numbers of offenders receiving community and suspended sentences.

##### *HM Courts and Tribunals System*

37. There will be estimated costs of less than £0.01m per annum to HMCTS, due to the increased caseloads for criminal damage flowing through the court system.

##### *Legal Aid Agency*

38. There will be estimated costs of less than £0.01m to £0.02m per annum, with a best estimate of £0.01m per annum, due to the increased caseloads for criminal damage flowing through the court system.

##### Non-Monetised Costs

##### *HM Prison and Probation Service*

39. Costs to HM Prison Service have not been monetised, as this measure is estimated to have a prison impact of less than 1 place per annum and therefore costs are assumed to be negligible.

### *Electronic Monitoring Service*

40. Costs to the Electronic Monitoring Service have not been monetised due to the low expected caseload (less than 1 starts per annum in the steady state) that would result from Measure 1(a). As a consequence, these additional costs are expected to be minimal.

### *HM Courts and Tribunals System and Sentencing Council*

41. There may be some one-off transitional costs for HMCTS and the Sentencing Council associated with the preparation of new training or guidance material. These costs have not been monetised due to a lack of cost data, though we anticipate any additional costs will be low.

### *Crown Prosecution Service*

42. The Crown Prosecution Service may experience additional costs due to higher caseloads in the Crown Court, which incur higher costs given the longer duration of trials. However, we are unable to realistically quantify these costs due to a lack of unit cost data. We anticipate any additional costs to be very low.

### *Offenders & their Families, Other Government Departments*

43. Because offenders may receive a more punitive disposal where they would have previously received a fine, they could face a greater chance of unemployment, loss of housing, negative effects on relationships or mental health. These effects could pose a cost to other areas of government by increasing demand for public goods and services such as unemployment benefits or social housing.

## **Benefits of Measure 1(a)**

### Monetised Benefits

44. There are no monetisable benefits to the CJS as a result of Measure 1(a).

### Non-Monetised Benefits

45. The confidence of those charged with the upkeep of memorials or other affected parties, as well as of the general public, in the CJS may be increased by these measures as sentences can better reflect the harm caused.

46. There may be a decrease in vandalism rates of war memorials and statues due to the deterrent effect of potentially tougher sentencing. This may be beneficial to those individuals, local authorities and other third-parties which manage or maintain memorials and statues in the form of reduced maintenance and repair costs

## **Measure 1(b): Child cruelty**

### **Costs of Measure 1(b)**

#### Monetised Costs

#### *HM Prison and Probation Service*

47. It is estimated that this option will result in an increase in the adult prison population of around 5 offenders in steady state by 2027/28. This impact is driven by the increase in sentence of causing or allowing a child or vulnerable adult to die from 14 years' imprisonment to life imprisonment, which will result in those serving over 7 years to serve two-thirds of their sentence in custody. This results in estimated additional running costs of £0.3m per annum.

48. Due to capacity constraints, additional prison places will need to be constructed to accommodate the additional prison demand under Measure 1(b). The total transition cost for the construction of additional prison capacity for all measures is estimated to be £1.2m.

#### Non-Monetised Costs

49. Because offenders may receive a more punitive disposal and may spend a greater proportion of their sentence in custody, they could face a greater chance of unemployment, loss of housing, negative effects on relationships or mental health. These effects could pose a cost to other areas of government by increasing demand for public goods and services such as unemployment benefits or social housing.

### **Benefits of Measure 1(b)**

#### Monetised Benefits

50. Measure 1(b) is estimated to lead to savings to the probation service of £0.03m per annum. These savings result from affected offenders spending custodial sentences who will serve the remainder of their sentence under Probation Service supervision after being released on license.

#### Non-Monetised Benefits

51. There are potential benefits through increased confidence in the Criminal Justice System where the public and victims may feel justice has been delivered.

52. Increased sentences for these offences may also create a deterrent effect which would have long-term benefits for the public and the Criminal Justice System, however the evidence of the existence and scale of any deterrent effects is weak<sup>3</sup>.

### **Measure 1(c): Positions of Trust**

#### **Costs of Measure 1(c)**

##### Monetised Costs

##### *HM Prison and Probation Service*

53. It is estimated that this option will result in an increase in the adult prison population of around 10 offenders in steady state by 2023/24. This results in estimated additional running costs of between £0.2m and £1.5m per annum, with a best estimate of £0.6m per annum.

54. Due to capacity constraints, additional prison places will need to be constructed to accommodate the additional prison demand under Measure 1(c). The total transition cost for the construction of additional prison capacity for all measures is therefore estimated to be between £0.9m and £6.7m, with a best estimate of £2.5m.

55. Measure 1(c) is estimated to lead to additional costs to the probation service of between £0.06m and £0.3m per annum, with a best estimate of £0.1m per annum. These costs are driven by the higher numbers of offenders receiving community and suspended sentences, but also by the higher number of offenders receiving custodial sentences who will serve the remainder of their sentence under Probation Service supervision after being released on license.

##### *HM Courts and Tribunals System*

56. There will be estimated costs of between £0.06m to £0.2m per annum to HMCTS, with a best estimate of £0.1m per annum. These costs are largely driven by the increased caseload due to the expansion of positions of trust offences.

##### *Legal Aid Agency*

57. There will be estimated costs of between £0.04m to £0.2m per annum, with a best estimate of £0.08m per annum. These costs are largely driven by the increased caseload as a result of the expansion of positions of trust offences.

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<sup>3</sup> Source: National Institute of Justice, 2016: Five Things about Deterrence (<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>)

## Non-Monetised Costs

### *Electronic Monitoring Service*

58. Costs to the Electronic Monitoring Service have not been monetised due to the low expected caseload (less than 5 starts per annum in the steady state) that would result from Measure 1(c). As a consequence, these additional costs are expected to be minimal.

### *HM Courts and Tribunals System and Sentencing Council*

59. There may be some one-off transitional costs for HMCTS and the Sentencing Council associated with the preparation of new training or guidance material. These costs have not been monetised due to a lack of cost data, though we anticipate any additional costs will be low.

### *Crown Prosecution Service*

60. The Crown Prosecution Service may experience additional costs due to higher caseloads in the Crown Court, which incur higher costs given the longer duration of trials. However, we are unable to realistically quantify these costs due to a lack of unit cost data. We anticipate any additional costs to be low.

### *Home Office*

61. There may be increased costs to the Home Office from the need to monitor and manage a greater number of offenders on the Sex Offenders Register as a result of the expansion of positions of trust offences. These have not been monetised due to lack of data, though we would expect any costs to be low due to the low volumes involved.

### *Offenders & their Families, Other Government Departments*

62. Because offenders may receive a more punitive disposal, they could face a greater chance of unemployment, loss of housing, negative effects on relationships or mental health. These effects could pose a cost to other areas of government by increasing demand for public goods and services such as unemployment benefits or social housing.

## **Benefits of Measure 1(c)**

### Monetised Benefits

63. There are no monetisable benefits to the CJS as a result of Measure 1(c).

### Non-Monetised Benefits

64. By deterring abuse of positions of trust, young adults aged 16-17 and their relatives, may feel safer partaking in sports or activities with religious and faith leaders. However, the evidence of the existence and scale of any deterrent effects is weak<sup>4</sup>. As a result, we have not quantified any of the potential benefits of deterrence.

## **Measure 1(d): DA Prosecution Time Limits**

### **Costs of Measure 1(d)**

#### Monetised Costs

65. Using the offence of assault without injury as a proxy, 20/21 data from 23 police forces shows that the number of cases of this offence with a Domestic Abuse flag that were over the prosecution time limit (OC17) was 3,200.

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<sup>4</sup> Source: National Institute of Justice, 2016: Five Things about Deterrence (<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>)

66. Population statistics and crime counts per area have been used to calculate a scaled-up estimate for all 43 forces, giving an estimate of 6,000 cases of the proxy offence over the time limit in 20/21. With a charge rate of 8% based on the latest published figure (year to March 2021) for DA-flagged Violence against the person, it is estimated there will be 500 additional prosecutions per year in steady state.

#### *Police*

67. Home office data shows a median time of 21 days to reach an OC17 outcome under the current legislation. This time is generally spent on investigating the date the crime happened, the crime type, assigning an investigating officer and potential consultation with CPS where applicable.

68. Taking out the cases where the victim does not support the action against the offender, we assume a median time of about 25 days for length of investigation if the time limits were removed. This would be an additional 20% investigation time per case.

69. The police investigation cost for a Domestic Abuse related violence without injury offence is assumed to be £1,318 based on published costs from the Economic and Social costs of Domestic Abuse report. A 20% increase in the investigation time for the 6,000 cases therefore leads to an additional £1.5m in police investigation costs per year.

#### *HMCTS*

70. As the relevant offences are summary only offences, the additional caseload of 500 cases per year will result in an additional cost to the magistrates' courts. This is estimated to be £0.3m per year based on the standard unit cost of Violence Against Person in the magistrates' courts.

#### *LAA*

71. The additional court cases will also result in a higher caseload for the Legal Aid Agency. Assuming a 50% eligibility rate in the magistrates' courts, there will be an additional cost per year of £0.1m.

#### *HMPPS*

72. The additional charges will also result in additional convictions, leading to prison costs. The 3-year average of convictions for charges of the offence of common assault and battery is 68%. Based on this, there will be an additional 341 convictions in steady state.

73. The statistics for common assault and battery also show that, on average, 14% of offenders are sentenced to immediate custody with an average custodial sentence of 2.8 months. It can therefore be estimated that this option will result in total additional prison time of 70 months per year, with 6 additional prison places being required.

74. The published cost of a prison place per year is £44,640 (19/20 prices), meaning the additional 70 months of prison time will result in a running cost of £0.3m per year.

75. Due to current capacity constraints, additional prison places will need to be constructed at a cost of £250,000 per place to accommodate the additional prison demand. There will therefore be a transitional cost of £1.5m to HMPPS.

#### Non-monetised Costs

##### *Police*

84. There may be some familiarisation costs for the police associated with this measure. These impacts have not been monetised but are assumed to be minimal.

#### **Benefits of Measure 1(d)**

##### Monetised Benefits

85. It has not been possible to identify any monetised benefits associated with this measure.

Non-monetised Benefits

86. This measure will benefit victims by enabling them to seek justice in common assault or battery cases involving domestic abuse in instances where it has, for entirely understandable reasons, taken some time to come forward. Perpetrators will no longer be able to evade prosecution because the alleged offence was not reported quickly. Offending behaviour may be reduced as a result of such a step, and public confidence that such crimes will be investigated will be increased. The measure also strikes a balance in starting the clock when an offence is formally reported through a witness statement or video recording made with a view to its use as evidence, rather than when initial contact with the police is made, as it provides the police and Crown Prosecution Service with sufficient time to investigate and consider the case in instances where the victim does not immediately want formal action to be taken.

**Measure 1(e): Breastfeeding Voyeurism**

**Costs of Measure 1(e)**

Monetised Costs

87. We have limited information on the prevalence of behaviour which would be captured by this new offence. Anecdotal evidence, however, suggests it is very rare. By way of comparison, CPS figures show that 16 offenders were convicted of the ‘upskirting’ offence in the first year of the offence being in place, of whom 4 received a custodial sentence. As ‘upskirting’ is believed to be a far more prevalent behaviour than breastfeeding voyeurism, these figures suggest the new breastfeeding voyeurism offence will have a very minimal impact on the Criminal Justice System. As such, it is not considered proportionate to monetise these impacts.

Non-monetised Costs

*Police, CPS, HMCTS, LAA, HMPPS*

88. There will be costs to the Criminal Justice System should there be any prosecutions under this new offence. As explained above, these costs are anticipated to be very minimal.

**Benefits of Measure 1(e)**

Monetised Benefits

89. It has not been possible to identify any monetised benefits associated with this measure.

Non-monetised Benefits

*Victims of breastfeeding voyeurism*

90. There will be benefits to victims of such behaviour to ensure such incidents are investigated and justice is delivered. There will also be the benefit of increased public confidence that this behaviour will be investigated, and women will feel more confident in breast-feeding in public places.

**Summary of impacts**

37. Table 1 below summarises the main components of the net impact of the measures contained in Option 1, the preferred option.

**Table 1: Summary of estimated net present costs and benefits (real prices, 2021/22)**

|                                 |                  | <b>Transition</b>   | <b>Costs</b>   | <b>Benefits</b> | <b>NPV</b>                                  |
|---------------------------------|------------------|---|--|-----------------|---|
| a) Criminal Damage to Memorials | <i>Monetised</i> | No additional prison capacity needs to be built because the expected prison caseload increases are less than 1 place per annum. | An additional 30 probation places required due to increased number of community and suspended sentences. This is | N/A             | High: -£1.8m<br>Low: -£0.3m<br>Best: -£1.1m |

|                       |                      |   |  |  |  |
|-----------------------|----------------------|---|--|--|--|
|                       |                      | Prison construction costs are thus treated as negligible.   | estimated to cost £0.09m per annum. Higher proportion of cases going to Crown court increases costs to LAA and HMCTS by a combined £0.02m per annum.   |  |  |
|                       | <i>Non-Monetised</i> | N/A   | Social relations between prisoners and their families could be impaired.<br><br>Increased costs to the Crown Prosecution Service due to more cases in Crown courts.<br><br>Greater demand on the NHS for prisoner care.  | Improved victim and public confidence and protection.  |  |
| b) Child Cruelty      | <i>Monetised</i>     | Around 5 prison places need to be constructed in Year 2 of policy implementation for an estimated cost of £1.2m.  | As a result of additional time spent in custody 5 additional prison places are required at a running cost of £0.3m per year.   | There is an expected saving to the HMPPS Probation Service as some offenders will spend less of their sentence in the community. Savings are expected to be £0.03m per year. | Best: -£2.0m                                 |
|                       | <i>Non-Monetised</i> | N/A   | Social relations between prisoners and their families could be impaired.<br><br>Greater demand on the NHS (England/Wales) for prisoner care.   | Improved victim and public confidence in the CJS.  |  |
| c) Positions of trust | <i>Monetised</i>     | Around 10 prison places need to be constructed in Year 1 of policy implementation for an estimated cost of £2.5m. | An increase in the adult prison population by around 10 places per annum which increase yearly running costs by an estimated £0.6m.<br><br>An additional estimated 25 probation places needed due to higher community and suspended sentence numbers increase yearly running costs by an estimated £0.1m.<br><br>Increased costs to HMCTS and LAA of £0.1m and £0.08m per annum. | N/A  | High: -£23.4m<br>Low: -£3.7m<br>Best: -£9.2m |
|                       | <i>Non-Monetised</i> | N/A   | Social relations between prisoners and their families could be impaired.   | Greater protection of vulnerable young people from exploitation by   |  |

|   |                      |  |   |   |  |
|---|----------------------|--|---|---|--|
|   |                      |  | <p>Increased costs to the Crown Prosecution Service due to higher caseload number.</p> <p>Increased costs to the Home Office for monitoring more offenders on the Sex Offenders Register.</p> <p>Greater demand on the NHS (England/Wales) for prisoner care.</p>                       | <p>people in positions of trust.</p> <p>Improved victim and public confidence and protection.</p> |  |
| d) Domestic Abuse Prosecution Time Limits | <i>Monetised</i>     | Around 6 additional prison places need to be constructed in Year 1 of policy implementation at an estimated cost of £1.5m. | <p>An increase in Police investigation costs, estimated to be an additional £1.5m per year.</p> <p>Increased caseload for both HMCTS and LAA, estimated to be £0.3m and £0.1m respectively.</p> <p>Additional prison time, estimated to cost HMPPS £0.3m per year in running costs.</p> |   | Best: -£21.2m                                  |
| e) Breastfeeding Voyeurism                | <i>Non-Monetised</i> | N/A  | Low number of cases expected and as such it is not considered proportionate to monetise these impacts.  | Benefits to victims in offences being investigated and access to justice being delivered.         | N/A  |
| Net Impact                                | <i>Monetised</i>     | Transition costs range from a low of £3.6m to a high of £9.3m  | Costs range from a low of £3.7m to a high of £5.8m  | N/A   | High: -£48.3m<br>Low: -£27.2m<br>Best: -£33.4m |

## F. Risks and Assumptions

38. The impacts estimated in this IA are based on certain assumptions. These assumptions, and their associated risks, are described in Table 2 below.

**Table 2: Assumptions and Associated Risks**

|             | Assumption   | Risks / uncertainties   |
|-------------|--|---|
| Overarching | The policy will come into effect in Spring 2022, and for the purposes of this IA that has been assumed to be May 2022. | Any delay to the implementation of the policy will delay the impacts by an equal amount of time.  |
|             | Future prison, probation and community volumes are based on a mix of published data and internal projections.          | It is difficult to predict future changes in the types of offences being committed and how this will impact the decisions made by sentencers. If there are significant changes in sentencing behaviour or offences being committed this will affect the estimates in this IA. |
|             | It is assumed that any additional prison places will incur an annual running cost of                                   | Running costs may be higher or lower depending on the specific estate required to accommodate   |

|  |  |   |
|--|--|---|
|  | <p>£48,672 in England and Wales (excluding optimism bias, based on 19/20 prices inflated to 21/22)<sup>5</sup>. This is the average cost of providing a prison place for a year based on overall resource expenditure and includes staffing and estate costs, it does not cover contracted out costs or capital.</p> | <p>the additional caseload and the needs of the offenders, thus pose a risk to the accuracy of our analysis of prison running costs.</p>  |
|  | <p>Additional prison places will need to be constructed in order to meet any increased demand, the construction cost for each place is £250,000.</p> <p>It is assumed that the construction of each place will take place in the first year after policy implementation.</p>   | <p>1. Whether Option 1 requires additional prisons to be constructed depends on what impact other policies and external factors have on prison places simultaneously. If the additional caseload could be accommodated in existing estate, then they may incur smaller costs relative to the results of our analysis.</p> <p>2. Our analysis rests on a fixed unit prison construction cost per place of £250,000. Whilst this assumption has been provided by the relevant experts which can assure its quality, in reality the cost schedule may not be linear, thus posing a risk to the accuracy of our analysis of prison construction costs.</p> <p>3. If construction doesn't occur in Year 1 but in later years or is spread out over multiple years, then the impact on the NPV is non-negligible.</p> |
|  | <p>Annual probation costs per offender are the same whether the offender is out on license, serving a community sentence, or serving a suspended sentence.</p>   | <p>This assumption is based on the average cost for all forms of probation. In practice however there may be nuanced differences between the forms of probation which can result in different costs, and the cost schedule may be linear. There is a risk that actual costs could be higher or lower.</p>   |
|  | <p>An optimism bias of 20% has been applied to all costs and benefits.</p>   | <p>This is standard practice in IAs to account for unforeseen costs or over-estimated benefits. Therefore, it may be the case that monetised costs and benefits are lower than estimated.</p>   |
|  | <p>The proportion of cases eligible for legal aid is 100% in Crown Court and 50% in Magistrates' Court.</p>  | <p>If legal aid eligibility is lower in the Crown Court then this would reduce legal aid costs. Conversely if legal aid eligibility was higher in the magistrates then this would reduce costs versus the counterfactual, due to a higher proportion of cases in the crown courts in option 1.</p>  |
|  | <p>It has been assumed that on average all offenders given custodial sentences for the offence are released from custody at 50% of their sentence to serve the remainder on license.</p>   | <p>If the average proportion of sentence served is significantly different from 50%, then prison costs and probation costs may be different from the results produced in our analysis. E.g. if some offenders don't qualify for automatic halfway release. This could have implications for prison costs (increase) and probation costs (decrease) but because prison is more expensive it would increase overall costs.</p>  |
|  | <p>The average community sentence length and the average suspended sentence length under Option 1 are equal to the average observed for all offenders.</p>   | <p>We were only able to obtain this data for all offenders who have breached their sentences, which is a subset of all the offenders that receive community or suspended sentences. This subset may not be representative of the wider population thus pose a risk that the figures used in our analysis are inaccurate. There is also a further risk that the sentence lengths under Option 1 substantially differ from the average for all offences. We have built some sensitivity analysis around this by having the average community sentence lengths in the high and low scenario be 20% longer and shorter, respectively, than the average used for the central scenario. For suspended sentences, the range used is 10% longer and shorter than the average.</p>                                       |

<sup>5</sup> Source: HM Prison & Probation Service, 2020: Annual Report and Accounts 2019-20 Management Information Addendum ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf))

|                              |   |  |
|------------------------------|---|--|
| Criminal damage to memorials | Offences are tried in Courts under the category “Criminal Damage”.  | If this were to change under future legislation, then the costs to HMCTS and LAA from this analysis may no longer be accurate.   |
|                              | The number of cases that will be sentenced for this offence every year range from 10 to 60, with a best estimate of 35.   | These figures are based on a mixture of published research and internal projections. The range is meant to illustrate the difficulty and uncertainty associated with forecasting caseloads. Long term trends in cases of criminal damage to memorials that we were unable to identify could result in significantly lower or higher caseloads under the new legislation compared to the figures used in this IA and there is a risk that costs to different stakeholders could be higher or lower. |
|                              | Assumptions around the Criminal Justice System outcomes for changes to criminal damage to memorials are based on a proxy offence (racially or religiously aggravated criminal damage), calculated from an annual average of the relevant statistics between 2015-2019. This was selected as an offence with similar severity (13 year maximum sentence) and type (criminal damage). | While the racially or religiously aggravated criminal damage offence has been carefully selected as a proxy due to the similar nature of the offence and sentencing severity, it remains a proxy and thus an imperfect measure of the statistics that might be observed for criminal damage to memorials under Option 1.   |
|                              | The average custodial sentence length (ACSL) is based on a five-year annual average of the observed sentence lengths of the racially or religiously aggravated criminal damage offence from 2015 to 2019.   | There is a risk that the choice of proxy is imperfect and that the actual sentencing lengths differ considerably between the two offences. To partially account for this uncertainty we have used the low and high scenarios to provide a ranged estimate for the ACSL, with the low (high) scenario using the lowest (highest) observed ACSL for the proxy offence during the five-year timeframe.  |
| Child cruelty                | The number of cases that will be sentenced to a custodial sentence of over 7 years for <i>causing or allowing a child or vulnerable adult to die</i> is 3 per year.   | This figure is based on a 5 year average from 2016-2020. If offence prevalence increased or a higher proportion of offenders were sentenced to over 7 years there is a risk of increased costs and prison places required.   |
|                              | The increase in maximum sentence for these offences will not lead to a significant increase in their average custodial sentence length (ACSL). The ACSL used is based on sentencing data from 2020.   | Current sentencing practice does not suggest that the current maximum penalties are insufficient in most cases, and so the risk of sentences increasing is expected to be low.   |
|                              | The proportion of sentence spent in custody is assumed to be 50% and will increase to 67% for those sentenced to over 7 years for <i>causing or allowing a child or vulnerable adult to die</i> .   | The proportion of sentence spent in custody can vary depending on factors such as time spent on remand and early release (Home Detention Curfew) which may affect the number of prison places required.  |
| Positions of trust           | Offences are tried in Courts under the category “Sexual Offences” and hence unit costs are calculated on this basis.  | If this were to change under future legislation, then the costs to HMCTS and LAA from this analysis may no longer be accurate.   |
|                              | The number of cases that will be sentenced for this offence every year range from 15 to 55, with a best estimate of 30.   | These figures are based on a mixture of published research and internal projections. The range is meant to illustrate the difficulty and uncertainty associated with forecasting caseloads. Long term trends in cases of abuse of positions of trust that we were unable to identify could result in significantly lower or higher caseloads under the new legislation compared to the figures used in this IA and there is a risk that costs to different stakeholders could be higher or lower.  |
|                              | The progression of cases through the courts for the professions newly included as positions of trust will follow the existing   | This has been assumed because the policy aims to broaden the base of an existing offence to include more settings, so it is likely that the same   |

|                            |   |  |
|----------------------------|---|--|
|                            | <p>pattern for the current positions of trust offence, calculated from an annual average of the relevant statistics between 2015-2019. The split of cases between Crown and Magistrates' Courts will remain the same (68% and 32%, respectively). Sentencing breakdowns, the proportion of total cases receiving each disposal type (community sentence, custody, etc.), will also remain constant.</p> | <p>sentencing breakdowns will apply. However, if sentencing behaviour changes then our caseload projections for each agency, and subsequently the estimated costs, may be significantly higher or lower than reality.</p>  |
|                            | <p>The average custodial sentence length (ACSL) is based on a five-year annual average of the observed sentence lengths of the existing abuse of positions of trust offence from 2015 to 2019.</p>  | <p>There is a risk that the actual sentencing lengths may differ due to a change in sentencing behaviour. To partially account for this uncertainty we have used the low and high scenarios to provide a ranged estimate for the ACSL, with the low (high) scenario using the lowest (highest) observed statistic during the five-year timeframe.</p>  |
| DA Prosecution Time Limits | <p>Police investigations of the over the time limit offences are assumed to take 20% longer than ones that are within the current time limit.</p>   | <p>There is a risk that this assumption could be higher or a lower, thereby resulting in either higher or lower costs to the police than estimated.</p>  |
|                            | <p>Assault without injury offences that are logged with a Domestic Abuse flag are used as a proxy.</p>  | <p>There is a risk that the number of common assault and battery offences in cases of domestic abuse differ from assault without injury. There is also the risk that not all cases of Domestic Abuse have been flagged for the proxy offence. Both of which could affect the analysis and subsequently the costings provided.</p>  |
|                            | <p>The percentage of offenders sentenced to immediate custody is 14% with an average custodial sentence of 2.8 months.</p>  | <p>These assumptions are based on averages for common assault and battery across the past three years (2018 -2020). There is a risk that changes to sentencing behaviour could alter these assumptions.</p>  |
| Breastfeeding Voyeurism    | <p>There will be a very low number of prosecutions and, as such, a very minimal impact on the Criminal Justice System.</p>  | <p>This assumption is based on considering the number of 'upskirting' prosecutions in the first year of the offence, of which there were very few. As 'upskirting' is believed to be a far more prevalent behaviour than breastfeeding voyeurism, the number of prosecutions for this new offence are likely to be very low.</p> <p>There is a risk that the creation of the offence increases awareness, which could lead to an increase in cases being reported.</p> |

## G. Wider impacts

### Equalities

39. We hold the view that none of the PCSC Act measures are likely to be discriminatory within the meaning of the Equality Act 2010 as they will not result in anyone being treated less favourably because of a protected characteristic or be likely to result in a particular disadvantage for anyone sharing a protected characteristic compared to those who do not. Please see the separate overarching equalities impact assessment published alongside this IA for further details.

### Impact on small and micro businesses

40. There are not assumed to be any direct costs or benefits to business.

### Better regulation

41. These measures are exempt from the Small Business Enterprise and Employment Act 2015 and will not count toward the department's Business Impact Target.

#### **International Trade**

42. There is no significant impact on international trade.

#### **Environmental Impact Assessment**

43. We expect there to be no environmental impacts as a result of Option 1.

#### **Family Impact Test**

44. There is no significant impact on families.

### **H. Monitoring and Evaluation**

45. The measures will be reviewed in the normal way for post legislative scrutiny.