

Title: Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent IA No: HO0144 Lead department or agency: Home Office Other departments or agencies:	Impact Assessment (IA)			
	Date: 11 February 2015			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: CTSBill@homeoffice.x.gsi.gov.uk				

Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£-0.1m	0	0	NO N/A

What is the problem under consideration? Why is government intervention necessary?

On 29 August 2014 the Joint Terrorism Analysis Centre raised the UK threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. There is a need to legislate to deal with the increased terrorist threat. Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and Iraq since the start of the conflicts; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant (ISIL). Should these individuals attempt to return to the UK they may pose a threat to our national security. Certain measures are in place to manage this risk, such as the work of the security and intelligence agencies and the police. However, further responses are required to manage their return and reintegration and help mitigate the terrorist threat they may pose.

What are the policy objectives and the intended effects?

To reduce the security risk to the UK resulting from the return of British citizens suspected of involvement in terrorism abroad.

To provide the relevant security and intelligence agencies and the police with an additional tool with which to improve their management of these individuals by increasing the control over the time and method of their return and allowing the security and intelligence agencies to put in place investigative and control measures for these individuals once they have returned.

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

Option 1 is to make no changes

Option 2 is to create "Temporary Exclusion Orders". Temporary Exclusion Orders will temporarily disrupt the return to the UK of a British citizen suspected of involvement in terrorist-related activity abroad and help to protect the public in the UK from a risk of terrorism.

Option 2 is the preferred option

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Ongoing review					
Does implementation go beyond minimum EU requirements?			n/a		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a		Non-traded: n/a

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible: Minister

_____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: make no changes

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate			

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

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

The do nothing option is the baseline and therefore has no costs or benefits.

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			

Description and scale of key monetised benefits by 'main affected groups'

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

The do nothing option is the baseline and therefore has no costs or benefits.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	no	no

Summary: Analysis & Evidence

Policy Option 2

Description: Create “Temporary Exclusion Orders”.

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	1	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0.1		N/A	0.1

Description and scale of key monetised costs by ‘main affected groups’

We estimate that training costs for Police and Border Force will be around £0.1m in year one.

The Criminal Justice System (CJS): It is estimated that a prosecution under either of the new offences could cost the CJS between **£8,000 (lower scenario)** to **£81,000 (higher scenario)** per defendant. We do not have enough data to estimate volumes.

The Civil Justice System: The costs of providing legal aid for each statutory review of a TEO are estimated at £5,000-£10,000. We would expect costs to increase should the TEO statutory review go to appeal.

Other key non-monetised costs by ‘main affected groups’

An excluded British national would have the right to request consular assistance once excluded.

The operational cost would need to be assessed on a case-by-case basis. Due to the number of variables involved, it is not possible to provide an average cost estimate for policing the out of country elements of the Temporary Exclusion Order. However, it is estimated that such costs may be in the region of £6,926 to £10,840 in an individual case where the police manage the return of an individual subject to a TEO from excluding overtime, use of vehicles, subsistence and accommodation.

There will be an additional impact on the civil justice system where the court determines applications from the Secretary of State to impose a TEO or an individual subject to a TEO applies for a statutory review of the order. There will also be additional refresher training costs for the Police and Border Force.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’

We have not monetised the benefits of this policy.

Other key non-monetised benefits by ‘main affected groups’

Individuals travelling to Syria and Iraq: Some will be disrupted on their return journey to the UK. We have not monetised this impact.

Reduction in the ability of British citizens to influence, plan and/or execute terrorist related activity in the UK. A terrorist attack can have a large impact in terms of the lives lost, damaged infrastructure and lost output, and longer term costs such as higher public anxiety. There are potential benefits to law enforcement agencies and the Security Service by creating an alternative method of managing British citizens suspected of involvement in terrorist related activity abroad.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

The time period during which an individual is prevented from entering the UK will vary on a case-by-case basis. The threat posed by an individual subject to a TEO will be reduced with respect to the UK due to the disruption of travel to the UK and control measures placed on them in-country. There can never be full assurance that those subject to TEOs will never get into the UK without being detected by the authorities.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	no	N/A

A. Define the problem

On 29 August 2014 the Independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and Iraq since the start of the conflicts and we estimate that around half of those have returned; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant (ISIL). On 1 September 2014 the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations, or conduct terrorist related activity, and subsequently returning the UK, and to deal with individuals already in the UK who pose a risk to the public.

Should these individuals attempt to return to the UK they may pose a threat to our national security. Certain measures are in place to manage this risk, such as the work of the security and intelligence agencies and the police. However, further responses are required to manage their return and reintegration and help mitigate the terrorist threat they may pose.

B. Rationale

Protecting the UK against terrorism is a fundamental role of Government. Counter-terrorism measures require judgments on the need to balance protecting the public with safeguarding civil liberties and dealing with sensitive issues of national security. Such judgments should not be left to the private sector. The private sector does not have the access to intelligence to understand the scale/nature of the threat.

It is the Government that manages sensitive information and intelligence on individuals that pose a terrorist threat and is responsible for the safety and security of UK citizens. Given the necessity of counter-terrorism measures, and the role of the Government to protect the public, the Government is uniquely placed to fulfil this role.

C. Objectives

To reduce the national security risk to the UK resulting from the return of British citizens suspected of involvement in terrorist related activity abroad.

To provide the relevant security and intelligence agencies and the police with an additional tool with which to improve their management of these individuals by increasing the control over the time and method of their return and allowing the security and intelligence agencies to put in place investigative and control measures for these individuals once they have returned.

D. Options

Option 1 is to make no changes.

Option 2 is to create "Temporary Exclusion Orders". Temporary Exclusion Orders will temporarily disrupt the return to the UK of a British citizen suspected of involvement in terrorist-related activity abroad. The threshold for imposing this order would be that the Secretary of State 'reasonably suspects that the subject is or has been involved in terrorism-related activity while outside the UK'. A Temporary Exclusion Order would be imposed by the Secretary of State, following advice from officials across Government and the security and intelligence

agencies and the court approving an application for permission to impose a TEO. The Temporary Exclusion Order would be imposed for a defined period of time, with the possibility of a new one being imposed following fresh reconsideration at the end of this period. The Temporary Exclusion Order would be subject to ongoing review. Two criminal offences will be created: 1) returning to the UK in breach of a Temporary Exclusion Order and 2) breaching any conditions attached to the Temporary Exclusion Order after returning to the UK.

Groups Affected

- British citizens suspected of involvement in terrorist-related activity abroad
- Border Force Primary Control Point Officers
- Law Enforcement Agencies
- UK Embassies
- The Home Office
- The Civil Justice System
- The Criminal Justice System
- Her Majesty's Government
- The General Public

COSTS

Border Force Primary Control Point Officers: This will impact on officers at UK Primary Control Points. Should a person subject to a Temporary Exclusion Order arrive at the UK border without engaging the authorities beforehand, in line with Border Force practice, 2-3 officers at the Primary Control Point will be required to handle the physical elements of bringing someone into detention, if that is what is deemed appropriate. We expect the cost of this to be negligible.

Detention at Port powers under section 2 of the UK Borders Act 2007 would be used to apprehend an individual subject to a Temporary Exclusion Order where appropriate. By early 2015, Border Force officers will have sufficient Detention at Port training and designation to be able to exercise this power. It will cost **£87,000** in the first year to ensure that all Border Force officers receive the necessary training on Temporary Exclusion Orders. This is based on 7,500¹ Border Officers receiving an estimated 30 minutes of familiarisation training.²

At the Border Force's juxtaposed controls in Calais, Dunkirk, Coquelles and at Eurostar rail terminals, Border Force officers may be required to detain an individual prior to the arrival of UK police or further detention by local police. This is subject to the cooperation of the French Government and law enforcement authorities. Discussions on this are underway. The time spent by Border Force officers apprehending and temporarily detaining any individual on Border Force premises would incur additional costs. Due to time and data constraints we have not been able to monetise the cost at this stage.

There are costs associated with issuing an alert to overseas police forces that an individual is planning to travel to the UK in breach of a Temporary Exclusion Order. Further costs will arise from Border Force officers dealing with false positive matches where the National Border Targeting Centre system identifies a potential match for an individual that is due to travel to the UK who is subsequently found to not be subject of a Temporary Exclusion Order. Due to time and data constraints we have not been able to monetise the cost at this stage.

UK Embassies: There may be costs associated with the UK requesting the temporary detention of an individual attempting to travel to the UK from a host country in contravention of a TEO. This cost cannot be quantified.

¹ This is an internal best estimate

An excluded British national would have the right to request consular assistance once excluded. Depending on the case-by-case specifics, an Embassy may provide limited, urgent assistance to an individual subject to a TEO, although there is no legal obligation for an Embassy to do so. These costs have not been monetised and will vary depending on the country in question and the individual circumstances of the case.

Police: The operational value will need to be assessed on a case-by-case basis. There will be costs incurred by the police when travelling to a host country to manage the return of someone subject to a TEO. The host country from where the individual attempted to travel to the UK would be notified. Depending on whether this is appropriate under their law and their authorities seek to do so, the host country may seek to detain the individual pending deportation.

Due to the number of variables involved, it is not possible to provide an average cost estimate for policing the out of country elements of the Temporary Exclusion Order. The Metropolitan Police Service provided an estimate of the potential costs of a single scenario. Based on four officers being involved in the operation (one Inspector, one Sergeant and two Constables) and three travelling to the host country, it is estimated that the total costs for planning, briefing and deployment would cost in the region of £6,926 to £10,840, excluding overtime, use of vehicles, accommodation and subsistence. The costs are broken down as follows:

- 2 days planning/briefing by 1 Inspector = £1,040 (at a cost of £520 per day)
- 2 days planning/briefing by 1 Sergeant = £1,070 (at a cost of £535 per day)
- 1 days planning/briefing for 2 Constables = £902 (at a cost of £451 per day)
- 2-4 days deployment for 1 Inspector = £1,040-£2,080 (at a cost of £520 per day)
- 2-4 days deployment for 1 Sergeant = £1,070-£2,140 (at a cost of £535 per day)
- 2-4 days deployment for 2 Constables = £1,804-£3,608 (at a cost of £451 per day)
- Return Flights from London Heathrow to Ankara for 3 officers = £1590 (at a cost of £530 each)

The number of officers involved and the time spent preparing the lead up to the deployment depends on a number of variables, such as the individual risk assessment or whether there are any associated health issues to consider. It should be noted that this estimate is uncertain and may not be representative for all scenarios relevant to policing the out of country elements of the TEO. This does not include any further investigatory costs in the UK and assumes the individual is fit to travel to the UK. It does not include any further costs for legal advice for the detainee. The figures include the set-up costs for a single deployment, but there will be an annual training cost in addition to this. This is separate from the estimated £87,000 training cost to Border Force. We do not have sufficient data to estimate the cost of this annual training at this time.

It is estimated that the total training costs in the first year for the police will be in the region of £19,700. This is based upon the recertification of approximately 50 specialist trained officers, which costs £5,050 at a standard rate of £101 per day. The cost of the instructors to plan and prepare this training amounts to approximately £2,400 per week if two officers are paid £240 per day over five days to complete the work. The cost of the instructors delivering the training is approximately £4,800 per week if four officers are paid £240 per officer per day to deliver approximately five days worth of training to ten officers per day.

Officers will also have to undertake the Airline Air Safety Module, which will need to incorporate additional material on TEOs. If these costs are factored into the total police training costs associated with the implementation of TEOs, then recertifying 50 officers will cost approximately £5,050 at standard daily rate of £101 per day, excluding any overtime to travel to the training site. The cost of the instructors delivering this training amounts to approximately £2,400 if two

officers are paid £240 per day and deliver approximately five days worth of training to ten officers per day.

These costs do not include the provision or hire of any specialist equipment during the training, overtime rates for officers, airline support costs or a training contingency budget should more TEOs be implemented than expected. Therefore the total costs are likely to be higher than the estimate provided. They are based on comparisons with similar costs for existing police training programmes. It has not been possible in the time available to tailor these costs to the exact specification associated with the police implementing their operational duties under the TEO scheme. There will be additional training costs in subsequent years, particularly if training is rolled out to non-specialist officers, however we do not have the data to monetise them at this stage.

There are costs associated with carrying out interviews in the UK to explore their activities abroad, which would require a minimum of two officers to complete the task. A larger number of officers would be required to investigate any account provided by the individual. The individual may be required to engage with a programme requiring them to notify the authorities of any change of address and engage in counter-extremism activities. It is assessed that up to 10 officers could be allocated, though not necessarily full-time; to any suspects of interest under the Temporary Exclusion Order regime not taking into account the impact on the security and intelligence agencies. However, such individuals of interest may be of interest to the police and intelligence agencies irrespective of the imposition of a TEO, so additional costs may not be accrued in all TEO cases. Depending on any material gained, MI5 and the police may consider any grounds for prosecution or imposing other measures, such as Terrorist Prevention and Investigation Measures.

Any litigation arising from Temporary Exclusion Orders would impose further costs on the Security and Intelligence Agencies and the criminal justice system as a whole. Any Judicial Review into Temporary Exclusion Orders will involve fees that will have to be paid by the applicant. However, as fees have been broadly set to cover the costs, we do not expect there to be a significant impact on the court system.

Individuals travelling to Syria and Iraq: Some will be disrupted on their return journey to the UK. We have not monetised this impact.

Civil Justice System Impact: Costs will be imposed on Her Majesty's Courts and Tribunal Service where:

- the Secretary of State makes an application to the court for permission to impose a TEO on an individual;
- the Secretary of State appeals a determination by the court not to grant permission to impose a TEO;
- an individual subject to a TEO applies for a statutory review of the order once they have returned to the UK.

The approximate cost per day of a High Court judge hearing a TEO case is £2,250, inclusive of HMCTS and judicial costs, but excluding capital costs. Due to time limitations it has not been possible to calculate the costs per case for any of these scenarios.

The costs of providing legal aid for each statutory review of a temporary exclusion order is estimated at £5,000 - £10,000, based on the assumption that costs would be akin to a judicial review, but subject to an increase due to some elements of the proceedings taking place in closed court. However, this figure may be higher and we would expect costs to increase should the temporary exclusion order statutory review go to appeal. We have provided these costs as

an illustrative figure of one case. We do not have the data to estimate volumes, so we have not provided a total estimated cost for the impact on the Civil Justice System.

The Secretary of State will require permission from the court before introducing a TEO. Second, those subject to a TEO will have the option of applying for a review when they have returned to the UK. Such reviews would be conducted on Judicial Review principles.

In the absence of any detailed data on the kind of individuals that might be subject to a TEO, we have assumed that 30% of individuals would qualify for legal aid following application of the statutory means test. This value is based on modelling of the general population using family resources survey data which suggests that approximately 30% of individuals would pass the statutory means test on the basis of their household's financial data. However this value may be greater if the characteristics of those made subject to a TEO vary significantly from the general population.

Separately from the cost to the legal aid fund of widening of scope of civil legal aid scheme, there is also a risk of increased pressure to the legal aid fund should decisions by the Secretary of State in accordance with the TEO policy be judicially reviewed. Legal aid is available for judicial review, subject to satisfying means and merits criteria. Individuals may also seek to bring a judicial review from out of country. The cost of providing legal aid in these circumstances is likely to be greater than for in-country judicial reviews. The risk of judicial review has not been quantified.

Given the *ex parte* nature of the judicial oversight to grant permission for a temporary exclusion order, we do not anticipate any costs to the legal aid fund arising from these proceedings. We recognise that should the court order that an individual be involved in these proceedings that there will be a cost to the legal aid fund, but in the absence of information regarding the way in which these proceedings would be conducted in these circumstances, it is not possible to calculate the costs to the legal aid fund. We do not expect that these circumstances will arise.

The Criminal Justice System: It is estimated that a prosecution under either of the new offences could cost the CJS between **£8,000 (lower scenario)** to **£81,000 (higher scenario)** per defendant.³⁴ Please see **Annex A** for further details. We do not have the data to estimate volumes, so we have not provided a total estimated cost for the impact on the Criminal Justice System.

NET PRESENT COST

We have only been able to monetise the impact of this policy in year one, which gives a best estimate of the net present cost of £107k. As set out, this relates to best estimated costs of training Border Force officers and excludes a number of other potential costs as set out above.

BENEFITS

The general public: This policy will increase the ability of law enforcement agencies to manage and disrupt individuals of concern. The power will help to reduce the ability of individuals travelling back from Syria and Iraq to influence, plan and/or execute an attack in the UK, by controlling their return and by imposing measures on them once they are back in the country. A terrorist attack can have a large impact on the UK, both in terms of the immediate impact, such as lives lost, damaged infrastructure and lost output, and longer term costs such as higher public anxiety.

³ In 2013/14 prices and are rounded to the nearest £1,000.

⁴ This includes HMCTS and CPS costs which are calculated on a per case basis.

The threat to the UK may also be reduced through individuals considering travel to Iraq or Syria who may choose not to go in the knowledge that by doing so they may potentially fall within scope of a TEO. By not travelling, they will present a lower risk to public safety as they will not have been exposed to the battlefield environment and to the terrorist training and influence in these countries.

Law enforcement: There are potential benefits to law enforcement agencies and the Security Service by creating an alternative method of managing British citizens suspected of involvement in terrorist related activity abroad. It will provide them with some advance notice of an individual's return to the UK, and allow them to start considering measures they might want to put in place to mitigate any risk the individual may pose. Law enforcement agencies may also benefit from additional intelligence gained through interviews and engagement with TEO subjects as part of the process. This may produce leads on other individuals engaged in terrorist-related activity or who may commit offences. The in-country elements of the order will be particularly helpful as it will allow law enforcement partners to place control measures and requirements on individuals who are of interest but do not reach the higher threshold for the imposition of a TPIM.

The controlled return and in-country management of these individuals may discourage attempts to commit a terrorist offence in the UK. This would reduce the burden on the Criminal Justice System. However, the scale of any effect is uncertain.

GENERAL ASSUMPTIONS & DATA

Due to the number of variables involved, and in some cases the lack of data, it has not been feasible to monetise the costs of specific areas of this policy.

ONE-IN-TWO-OUT (OITO)

This policy is out of scope.

E. Risks

Any litigation arising from individual cases would impose additional resource demands on law enforcement agencies and the criminal justice system.

Although Temporary Exclusion Orders should reduce the threat to the UK, there can never be full assurance that those subject to TEOs will never get into the UK without being detected by the authorities.

There is a risk of false positive matches on individuals of interest, but this will be mitigated by applying further scrutiny to the matches and ensuring that appropriate training is in place. Claims of false positives will be handled as a priority by relevant immigration officials.

The police would not have the same powers to arrest and detain should they uncover evidence abroad during the course of their enquiries of someone subject to a Temporary Exclusion Order. This risk may be mitigated through close engagement with the authorities in host countries.

F. Implementation

Commencement will begin shortly after Royal Assent for the Counter Terrorism and Security Act is received upon agreement of the Rules of Court for TEO proceedings.

G. Monitoring and Evaluation

The Temporary Exclusion Order will be subject to ongoing review by the Security Service. A Temporary Exclusion Order will be subject to reconsideration after a particular time period.

H. Feedback

The police and intelligence agencies will consider whether to use TEOs as part of the suite of operational measures available to them. The policy will be kept under review by the Home Office.

Annex A

It is not possible to predict how many temporary exclusion orders will be served; we have therefore provided unit figures to give an indication of costs.

Both proposed offences will be triable either way⁵ and both will have a maximum penalty of five years imprisonment. There is no sufficiently similar offence which would support robust modelling⁶. In the absence of this, to support assumptions about impact, lower and higher scenarios reflecting costs per case for both offences have been estimated:

- For the lower scenario, general Criminal Justice System (CJS) data relating to indictable and either way offences⁷ was used to estimate the typical progression of a case through the CJS. This then enabled us to estimate the weighted CJS cost per case.
- For the higher scenario a “worst-case” was used; it was assumed that every defendant proceeded against was tried in the Crown Court, was found guilty and was subsequently sentenced to the maximum sentence for the proposed offence (five years imprisonment given for both offences in indictable convictions).

Further work is required to estimate the number of additional prosecutions and refine the cost per case. At present, it has not been possible, to estimate the number of proceedings for the proposed two new offences.

Estimated CJS costs per case⁸

Cost estimates have been produced using unit costs for different parts of the criminal justice system. There are some assumptions and caveats associated with these, and these must be quoted in published documents. See **Annex B** for a full outline of the assumptions and associated risks, and see below for a further breakdown of the costs to each CJS agency.

Assumptions underpinning progression of each new offence through the CJS are the same. Therefore estimated costs laid out below apply to both.

Crown Prosecution Service (CPS) and Her Majesty's Courts and Tribunal Service (HMCTS)

Prosecution costs to the CPS and court costs to HMCTS are different in the Magistrates Court (MC) to the Crown Court (CC), and are higher in the latter. As this offence is triable either way only, we estimate the weighted cost to the CPS and HMCTS for the lower scenario. For the higher scenario it is assumed that each defendant is tried in the Crown Court and thus only Crown Court costs are applied.

It is estimated that the cost to the CPS:

- For the lower scenario would be approximately £800 per case.
- For the higher scenario would be approximately £2,600 per case.

It is estimated that costs to HMCTS:

⁵ An offence that is triable in either the Magistrates or Crown Court. Some proceedings will start and end in the Magistrates Court whereas others will start in the Magistrates Court but end in the Crown Court. In triable either way cases, defendants can elect to stand trial in the Crown Court or they can be sent for trial in the Crown Court because the offence is deemed serious enough (these cases are committed for trial).

⁶ Volumes were too low to provide robust assumptions about the flow of a case through the CJS given the proxy offences provided. Further investigation into other proxy offences may take place.

⁷ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-april-2013-to-march-2014>

⁸ All costs are rounded to the nearest £100 and are in 2013/14 prices

- For the lower scenario would be approximately £700 per case.
- For the higher scenario would be approximately £1,100 per case.

Legal Aid (LA) Costs

LA eligibility and costs also differ in the MC and CC; typically a higher proportion of defendants are eligible in the CC where costs are also higher.⁹

It is assumed the eligibility rate in the magistrates' court is 50% and the eligibility rate in the Crown Court is 100%.

Costs to the Legal Aid Agency (LAA) are therefore estimated to be:

- For the lower scenario would be approximately £400 per defendant.
- For the higher scenario would be approximately £1,000 per defendant.

Prison costs

The average prison costs per proceeding are weighted by the estimated proportion of defendants proceeded against that receive a custodial sentence and the average custodial sentence length (ACSL) served.

For the lower scenario, we use general data from 2013/14 for indictable and either way offences proceeded against at all courts to estimate the prison cost per proceeding for the lower scenario. It shows that approximately 80% of those proceeded against were convicted, and of those who were sentenced, approximately 27% received prison as a disposal.

The data shows that an offender receiving a custodial sentence would be given an ACSL of 18 months.¹⁰

It is assumed that offenders serve half of their custodial sentence, thus average time served is therefore approximately 9 months.

For the higher scenario it is assumed that all defendants proceeded against are found guilty and sentenced to the maximum available sentence for the proposed offence of 5 years imprisonment.

It is then assumed that offenders serve half of the custodial sentence given (5 years) thus average time served is approximately 30 months.

The estimated prison costs are therefore:

- For the lower scenario approximately £4,500 per defendant.
- For the higher scenario approximately £70,000 per defendant.

Probation costs

The estimated average cost consists of two types of probation costs.

⁹ Legal Aid eligibility in the magistrates' court is dependant on a defendant passing the interests of justice test, and a means test. For more information, see: <https://www.gov.uk/legal-aid/eligibility>

¹⁰ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-april-2013-to-march-2014>

First, the cost of post-release probation is calculated. It is assumed that an offender given a custodial sentence of 12 months or over will serve half of their sentence in custody and the other half on post-release licence. This component of the probation costs is weighted by the proportion of defendants proceeded against given a custodial sentence of 12 months or over and the ACSL served (as with the prison costs above). Offenders given less than 12 months in custody are not currently subject to supervision on release. Under the Offender Rehabilitation Act 2014 this will change but for the purposes of this IA we have based estimates of cost on current practice.

Second, we calculate the cost of probationary sentences given to offenders as a disposal. This includes community orders and suspended sentence orders. Data from 2013/14 for indictable and either way cases at all courts shows that approximately 28% of proceedings resulted in a community order or a suspended sentence¹¹.

The estimated total probation costs:

- For the lower scenario £1,300 per defendant. The lower scenario is a weighted cost to account for the mix of post-release probation and probation given as a disposal for community orders and suspended sentence orders etc.
- For the higher scenario £6,700 per defendant; the only probation costs would be post-release from custody as it is assumed that all defendants would be found guilty and sentenced to the maximum custodial sentence of five years imprisonment.

Estimating total CJS costs

All of the above are intended to estimate how cases may progress through the criminal justice system and the associated costs. Prediction of likely volume of cases is not feasible.

¹¹ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-april-2013-to-march-2014>

Annex B

Progression of cases through the CJS¹²

A lower and a higher scenario have been used to estimate progression of cases through the CJS in the absence of a viable proxy offence:

1) Lower scenario is based on general data for indictable and either way cases heard at all courts in 2013/14¹³.

2) Higher scenario is based on 100% of defendants being:

- Tried in Crown Court.
- Eligible for legal aid.
- Found guilty.
- Given the maximum available custodial sentence of 5 years.

Assumptions	Risks
<p>Proportion of cases tried in the magistrates' vs. the Crown Court</p> <ul style="list-style-type: none"> • For the lower scenario it is assumed that 74% of defendants are tried in the Magistrates' court and 26% are tried in the Crown Court. • For the higher scenario it is assumed that 100% of defendants are tried in the Crown Court. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/14.</p>	<ul style="list-style-type: none"> • More cases will be tried in the Crown where the costs tend to be higher.
<p>Proportion of defendants found guilty</p> <ul style="list-style-type: none"> • For the lower scenario it is assumed that around 80% of defendants are convicted. • For the higher scenario it is assumed 100% of defendants are convicted. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/14.</p>	<ul style="list-style-type: none"> • More defendants will be convicted.

¹² All of the costs presented below have been rounded to the nearest £100 and are in 2013/14 prices.

¹³ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-april-2013-to-march-2014>

<p>Disposals given:</p> <ul style="list-style-type: none"> • For the lower scenario it is assumed that of those sentenced following conviction, around 27% offenders are given a custodial sentence. • For the higher scenario it is assumed that 100% of offenders are given a custodial sentence. <p>Average custodial sentence length (ACSL):</p> <ul style="list-style-type: none"> • For the lower scenario it is assumed that the ACSL would be 18 months. • For the higher scenario it is assumed that the ACSL would be 5 years; this is the maximum available sentence for both offences. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/4.</p>	<ul style="list-style-type: none"> • That the ACSL given is longer. • Offenders given less than 12 months in custody are not currently subject to supervision on release. Under the Offender Rehabilitation Act 2014 this will change but for the purposes of this IA we have based estimates of cost on current practice.
<p>New policies</p> <ul style="list-style-type: none"> • Our analysis does not take into account the possible interaction with other policies that have not yet been commenced. 	<ul style="list-style-type: none"> • There is the risk that such policies, once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.

Cost assumptions

CPS costs, advocacy costs:

- The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks).

Source: CPS 2014; MoJ internal analysis, 2014.

- The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated.

HMCTS costs (magistrates):

To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.

Timings data for offence categories:

- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits.
- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits.
- Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information is available on admin time, however we have excluded it for simplicity.
- The timings are collection of data from February 2009. Any difference in these timings could influence costings.
- The timings data also excludes any

adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimated.

- Guilty plea proportions at the Initial hearing from Q2 in 2012 are used based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).

HMCTS average costs per sitting day:

HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.

<p>HMCTS costs (crown):</p> <p>Timings data for types of case (e.g., indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2013/14 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> • The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. • Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate. • The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. • Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences. <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> • HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs. •
<p>Legal Aid Costs:</p> <p><i>Cases in the magistrates court</i></p> <ul style="list-style-type: none"> • For the lower scenario, it is assumed that the eligibility rate for legal aid in the magistrates' court is 50%. • For the higher scenario it is assumed that all defendants would be tried in the Crown Court and thus legal aid costs in the magistrates' court would not be taken into account. 	<p><i>Magistrates court</i></p> <ul style="list-style-type: none"> • Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings. • More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.

<ul style="list-style-type: none"> The average cost per case is £500, and that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014 (Main tables, table 2.3). <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> For the lower scenario it is assumed that the eligibility rate for legal aid is 100%. For the higher scenario it is assumed that the eligibility rate for legal aid is also 100%. The average cost per defendant is around £1,000 based on the offence type. We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2013/14 data as a proxy for the cost per defendant. <p>Source: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</p>	<p><i>Crown Court:</i></p> <ul style="list-style-type: none"> Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary. There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.
<p>Prison costs:</p> <ul style="list-style-type: none"> We assume that an offender serves half of their given custodial sentence: For the lower scenario this means it is assumed that offenders will on average serve 9 months in prison. For the higher scenario this means it is 	<ul style="list-style-type: none"> The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at

<p>assumed that offenders will on average serve 30 months in prison.</p> <ul style="list-style-type: none"> The cost per prison place is approximately £28,000. <p>Source: NOMS management accounts addendum (2012/13).</p>	<p>or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.</p>
<p>Probation costs:</p> <p>Post release licence costs:</p> <ul style="list-style-type: none"> It is assumed that post release probation costs are approximately £2,700 per year in 2013/14 prices. <p>Independent probation costs:</p> <ul style="list-style-type: none"> Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices. The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and uprated in line with the GDP deflator of 1.84% (https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts). <p>Source: MoJ internal analysis, 2013/14.</p>	<ul style="list-style-type: none"> We have based our estimates on current practice. However the Offender Rehabilitation Act 2014 includes provisions to introduce post release licence conditions for offenders given a custodial sentence of less than 12 months. After the commencement of these provisions, there will be costs associated with post release licence for offenders convicted of this offence who are sentenced to immediate custody. The wider costs of extending post-release supervision to any offenders released from short custodial sentences will be met through savings realised from the Transforming Rehabilitation reforms to probation services.