

<b>Title:</b> A Smarter Approach to Sentencing: Changes to release policy for serious offenders <b>IA No:</b> MoJ067/2020 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 26/08/2020			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> Stephen Bailey (Stephen.Bailey@Justice.gov.uk)				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A	

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£241m	N/A	N/A	Not a regulatory provision

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

The Government is committed to ensuring that those who commit the most serious offences should spend a greater proportion of their sentence in prison before they are released on licence. Changes have already been made in respect of serious sexual and violent offenders who receive a standard determinate sentence (SDS) of 7 years or more for an offence for which the maximum penalty is Life. From 1 April 2020, such offenders now serve two-thirds of their sentence in prison, where previously (and for other SDS offenders) the automatic release point was halfway. The first legislative measure in this IA will move the automatic release point for specified offenders sentenced to an SDS of 4 years or more but less than 7 to the two-thirds point. This will align the sentencing framework for such offenders sentenced to 4 years or more with the existing framework for those sentenced to 7 years or over. For terrorist offenders who receive a Sentence for Offenders of Particular Concern (SOPC) the earliest point of Parole Board release was moved recently from the halfway to the two-thirds point. This now means there is a disparity between the release points for terrorist and non-terrorist SOPC offenders. The second legislative measure will address this issue. Government intervention is required as making changes to the existing sentencing framework requires primary legislation.

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

Both policies in this IA function to ensure that offenders committing the most serious types of sexual and violent offences will spend a greater proportion of their sentence in custody and to ensure better alignment with the overall sentencing framework. This will contribute to better protection for the public, provide greater public confidence in sentencing and the administration of justice.

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

Require certain sexual and violent offenders who receive an SDS to serve two-thirds in custody:

- Option 0: Do nothing.
- Option 1: Implement legislative measures (a) and (b):
  - a) Move the automatic custodial release point for specified offenders sentenced to an SDS of 4 years or more but less than 7 years from the halfway point to two-thirds of the total sentence; and
  - b) Move the earliest point of discretionary release for child sex offenders sentenced to a Sentence for Offenders of Particular Concern (SOPC) from the halfway point to the two-thirds point of the sentence.

The Government's preferred option is Option 1 as this best meets the policy objectives. Under Option 1, the most serious sexual and violent offenders sentenced to an SDS of 4 or more years but less than 7 would spend at least 8 months longer in custody. There would also no longer be a disparity in the earliest conditional release point for terrorism-related and child sex offence SOPCs, better aligning the sentencing framework.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A						
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?			<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> 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 Minister: Robert Buckland Date: 16 Sep 20

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Implement legislative measures (a) and (b)

## FULL ECONOMIC ASSESSMENT

Price Base Year 20/21	PV Base Year 20/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -229.2	High: -253.3	Best Estimate: -241.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£123.1m	£11.3m	£235.9m
High	£136.0m	£12.5m	£260.8m
Best Estimate	£129.6m	£11.9m	£248.4m

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

Both measures in this IA ensure that some offenders spend a larger proportion of their sentence in custody than under the current sentencing framework, which increases the overall prison population. By March 2031, there will be an additional 530 prison places required due to these measures. These places have an additional running cost to the prison service of £12m per year.

Additional prison capacity will need to be constructed in order to accommodate this additional demand, which is estimated to cost the prison service a total of £130m over the next 10 years.

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

A later release date and reduced licence period could disrupt offenders' and family relationships and reduce opportunities for rehabilitation in the community, this could lead to higher reoffending rates due to less post-custody rehabilitation activity from the probation service. Increases in the prison population could lead to more crowding in prisons which causes more tension in the prison community and cause additional costs for the prison service.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	£0.7m	£6.8m
High	N/A	£0.7m	£7.5m
Best Estimate	N/A	£0.7m	£7.1m

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

Both measures in this IA see offenders spend a longer proportion of their sentence in custody and a shorter period under licence supervision in the community. In March 2031, there is estimated to be 530 fewer individuals on licence, saving the probation service around £0.7m per year.

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

By ensuring serious offenders spend more time in custody, victims and the wider public will be protected for longer. Furthermore, greater consistency in sentencing may improve victim and public confidence in sentencing and the criminal justice system as a whole. Ensuring the public believe the criminal justice system is fair is important for the efficient functioning of the system and may be significant in securing cooperation from victims and witnesses, for example in giving evidence, and in encouraging victims to come forward. Local authorities providing accommodation services when these offenders are released into the community may incur savings due to the reduced time on licence (although costs of social care in custody are higher).

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
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- The impacts of this option have been estimated using a combination of sentencing data and internal prison population projections. Two specific factors which could cause the impacts in this IA to be inaccurate are the criminal justice system's recovery rate from COVID-19 and the manifesto commitment to recruit additional Police Officers. There is also potential for long term crime rates, nature of crimes or sentencer behaviour to change naturally.
- Prison place and probation costs are based on our best estimates of the needs and risks of the effected offender cohorts. However, individual needs the and risks associated to future offenders could differ in future.
- It is assumed that any additional prison capacity required as a result of this option require new prison places to be constructed as space is not available in the existing estate under the current departmental forecast. Construction costs are based on internal estimates and include an 'optimism bias' which is standard practice in IAs.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
Costs: N/A	Benefits: N/A	Net: N/A	

# EVIDENCE BASE

## A. Background

1. The most common type of custodial sentence imposed by the courts is the standard determinate sentence (SDS). In 2019, there were 73,901 individuals given an SDS, representing 99% of all custodial sentences<sup>1</sup>. An SDS is given when the offender has not been deemed by the sentencing judge to be dangerous enough to reach the threshold for a public protection sentence.
2. Under the current sentencing framework, the vast majority of offenders sentenced to an SDS must be automatically released from custody at the halfway point of their sentence. They serve the second half on licence, during which they are subject to conditions and probation supervision and may be recalled to prison if they do not comply.
3. Automatic release on licence at the halfway point was first introduced in the Criminal Justice Act 1991 for sentences of less than four years. For sentences of 4 years or more under the 1991 Act, release was at the discretion of the Parole Board between the halfway and two-thirds point. The Criminal Justice Act 2003 made further changes, requiring all SDS prisoners, including those sentenced to 4 years or more, to be automatically released from custody at the halfway point. But the 2003 Act also introduced new 'public protection' sentences for offenders assessed by the courts to be dangerous – and those types of sentences required release to be decided by the Parole Board.
4. All SDS prisoners were subject to automatic halfway release until 1 April 2020, when the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 came into force. This saw the automatic release point for the most serious sexual and violent offenders sentenced to 7 years or more increased to the two-thirds point of the sentence. This change applied to sentences imposed on or after 1 April 2020. The most serious sexual and violent offences are defined as those listed in Schedule 15 of the Criminal Justice Act 2003 that carry a maximum penalty of a life sentence.
5. However, we believe it is necessary to go further, to ensure that where certain types of serious offence attract sentences of 4 years or more and less than 7 years, a similar approach is adopted. The first of the options outlined in this IA seeks to apply the two-thirds release point to more SDS offenders that commit the most serious types of sexual and violent offences that attract an SDS.
6. The Government has chosen 4 years as the minimum sentence length to which this change will apply. Prior to the 2003 Act, a clear distinction was made between long and short-term prisoners. Long-term prisoners were defined as those sentenced to 4 years or more and were automatically released at the two-thirds point of their sentence (with release possible at Parole Board discretion from the halfway point), while short-term prisoners were automatically released at the halfway point. The Government wishes to target the most serious offenders, and so is partly restoring this distinction between short and long-term sentences for those convicted of very serious offences.
7. It should be noted that where a Schedule 15 offence has been committed, the surrounding circumstances are all sufficiently serious, and the judge assesses that the offender may present a future danger to the public, a life sentence or an extended determinate sentence (EDS) may be imposed. Under a life sentence the offender may be held indefinitely (i.e., after the minimum term in prison – or 'tariff' – set by the judge has been served) until the Parole Board deems it safe to release them. Under an EDS release is at Parole Board discretion between the two-thirds and end points of the custodial term and that is followed by an extended period on licence (of up to 5 years for violent offenders and 8 years for sexual or terrorist offenders).

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<sup>1</sup> Sentencing Data Tool, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

8. In addition, the Sentence for Offenders of Particular Concern (SOPC) was introduced in 2015 for specified child sex offences and all terrorist offences<sup>2</sup>. This type of sentence must be applied (rather than an SDS) if the court does not impose either an EDS or life sentence for the specified child sex offences or any terrorist offence. Like an EDS, any early release from custody (i.e., before the end of the original sentence) under a SOPC is at Parole Board discretion and there is a mandatory 12-month licence period after the sentence to ensure offenders released from a SOPC have at least a year under supervision and subject to recall. If released early from a SOPC, the time between release and the end of the original sentence will also be spent on licence in the community.
9. Child sex offences make up over 95% of all SOPCs, with terrorist offences making up the remaining 5% – this is due to a combination of factors relating to terrorism-related offences. It would be expected that terrorist offenders would be more likely to qualify for an EDS or a specific terrorism-related sentence and terrorism offences are low in volume compared to the sexual offences that qualify for a SOPC.
10. When first introduced, the earliest possible point that anyone serving a SOPC could apply for early release through the Parole Board was halfway through their sentence. In 2020, the earliest possible point at which those serving a SOPC for a terrorism-related offence can apply for release was changed from the halfway to the two-thirds point. The second policy in this IA seeks to align the two cohorts of terrorist and child sex offenders so that all SOPC offenders are required to serve two-thirds of their sentence in prison before being eligible for release by the Parole Board.

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

11. The conventional economic approach to Government intervention is based on efficiency and equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or there are failures with existing Government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to groups in society in more need).
12. In this case, however, the primary rationale and objectives of the policies assessed in this Impact Assessment (IA) are to improve public protection and increase victims' confidence in the justice system by ensuring that offenders convicted of the most serious sexual offences and homicide-related offences that carry a maximum sentence of life will spend more of their sentence in custody. There is limited evidence that longer custodial sentences reduce reoffending or have a deterrence effect on overall crime. However, ensuring offenders spend longer in custody protects the public for the additional time and may improve the public's confidence in the justice system.
13. The proposed change to the automatic release point for specific serious offenders sentenced to more than 4 years and less than 7 years aims to better align the sentencing framework for serious sexual and violent offenders sentenced to 4 years and over with the existing framework for those sentenced to 7 years or over. In April 2020, the automatic release point for the most serious sexual and violent offenders given an SDS of 7 years or more was changed to the two-thirds point of the sentence. This applied to offences in Schedule 15 of the Criminal Justice Act 2003 for which the maximum penalty is a life sentence, such as rape, serious assaults and manslaughter. The change proposed in this IA would see the automatic release point increased to two-thirds for sentences of 4 years or more and less than 7 years for those Schedule 15 sexual offences and violent offences (attempted murder, conspiracy to murder, manslaughter and wounding with intent to cause grievous bodily harm) which can attract a maximum life sentence.
14. The proposed change to SOPCs aims to ensure more consistency across the sentence type and the wider sentencing framework. Currently, the earliest possible release point for sexual offenders

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2015/2/schedule/1/enacted?view=plain>

sentenced to a SOPC differs to terrorism-related SOPCs. The proposal in this IA would ensure the earliest release point is set at two-thirds of the sentence length for all SOPCs.

## C. Affected Stakeholder Groups, Organisations and Sectors

15. The following groups will be most affected by the options considered in this IA:

- HM Prison and Probation Services (HMPPS)
- Parole Board
- Victims
- The public
- Offenders and their families
- Police service
- Department for Health and Social Care (DHSC)/National Health Service (NHS)
- Local Authorities

## D. Description of options considered

16. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0: Do nothing:** Make no changes to the current sentencing framework
- **Option 1: Implement legislative measures (a) and (b):**
  - a) **Move the automatic custodial release point for specified offenders sentenced to an SDS of 4 years or more but less than 7 years from the halfway point to two-thirds of the total sentence; and**
  - b) **Move the earliest point of discretionary release for child sex offenders sentenced to a Sentence for Offenders of Particular Concern (SOPC) from the halfway point to the two-thirds point of the sentence.**

17. The preferred option is **Option 1** as it best supports the policy objectives.

### Option 0: Do nothing

18. Under option 0, The automatic release point for these specified offenders for sentences of 4 to 7 years will remain at the halfway point. They will then serve the second half of their sentence under licence supervision in the community. Likewise, no changes would be made for offenders serving a SOPC for a child sexual offence.

### Option 1: Implement legislative measures (a) and (b)

19. Option 1 comprises two legislative measures which will affect different cohorts, but both aim to ensure that offenders committing the most serious sexual and violent offences will spend a greater proportion of their sentence in custody. They both also aim to ensure better alignment with the overall sentencing framework, including provisions that apply to those sentenced to an EDS and those sentenced to an SDS of 7 years or more for certain Schedule 15 offences.

20. For the wider sentencing framework, the earliest possible release point from custody is currently set at the two-thirds point for various sentence types, where the offence is particularly serious and sexual or violent in nature, this already includes:

- **All Terrorism-related SOPCS** – earliest discretionary release is at the two-thirds point
- **All EDS** – earliest discretionary release is at the two-thirds point
- **All 7 Year plus SDS Schedule 15 offences with a maximum sentence of life** – automatic release at the two-thirds point
- **All 4 Year plus, but less than 7 Year SDS offences specified in this IA** – automatic release at the two-thirds point *NOTE: this is a proposal in this IA and is not in place in the current sentencing framework*

21. In addition to terrorist offences, SOPCs are only reserved for specified child sex offences. Because of this, it does not seem appropriate that an offender would be eligible for release at an earlier point (as a proportion of their total sentence) than SDS offenders convicted of other sexual offences with an automatic release point of two-thirds.
22. Parole Board approval is required for any SOPC offender to be released before the end of their sentence, so any offenders that are deemed to still be dangerous to the public would not be released at the halfway point under the current SOPC regime.
- a) **Move the automatic custodial release point for specified offenders sentenced to an SDS of 4 years or more but less than 7 years from the halfway point to two-thirds of the total sentence**
23. The specified offences that are proposed in this legislative measure are sexual and homicide-related offences and wounding with intent to cause grievous bodily harm (GBH). These offences are all part of Schedule 15 of the Criminal Justice Act 2003 and carry a maximum sentence of life in prison (see Annex A for list of offences included). The additional proportion of the sentence spent in custody will result in an equal reduction in the amount of time spent under licence supervision in the community.
24. Legislative measure (a) will ensure the most serious sexual and homicide-related offenders and those convicted of GBH spend longer in custody. This will increase public protection through longer custodial periods for the most serious sexual and violent offenders. It will also better align the overall sentencing framework as, currently, only the most serious offenders sentenced to an SDS of 7 years or more in custody have a release point of two-thirds. This creates a disparity where individuals committing offences of a similar nature (if not the exact same offence in many cases) will have a much shorter custodial period if they are sentenced to just under 7 years as opposed to exactly 7 years.
- b) **Move the earliest point of discretionary release for child sex offenders sentenced to a Sentence for Offenders of Particular Concern (SOPC) from the halfway point to the two-thirds point of the sentence**
25. Currently, an offender given a SOPC for a child sex offence will be eligible for release from custody at the discretion of the Parole Board at the halfway point of their sentence. This legislative measure would move the earliest point an offender could be released from a SOPC, subject to Parole Board approval, to the two-thirds point. This is already the case for terrorist offenders that receive a SOPC; this change ensures the SOPC release provisions are the same for any eligible offence.
26. Legislative measure (b) will therefore bring into alignment the release policy for all offences which are required to receive a SOPC.

## **E. Cost and Benefit Analysis**

27. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
28. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetised and non-monetised costs and benefits, with due weight given to those that are not monetised.
29. The costs and benefits of each proposal are compared to Option 0, the counterfactual or “do nothing” scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
30. The impacts in this IA are presented in the following manner:

- The annual costs and benefits are presented in steady state throughout this IA. The steady state is expected to occur in 2028-2029
- All estimates, unless stated otherwise, are annualised figures in 2020-21 prices rounded to nearest £1m or £100k where the costs are under £10m.
- Unless otherwise stated, a 20% optimism bias has been applied to all impacts (costs and benefits).
- The NPV has been calculated using a 10-year appraisal period beginning in 2021-22.

**a) Move the automatic custodial release point for specified offenders sentenced to an SDS of 4 years or more but less than 7 years from the halfway point to two-thirds of the total sentence**

31. In 2019, there were 218 sentences of 4 to 7 years (inclusive) for sexual or homicide-related offences on schedule 15<sup>3</sup>. There were also 403 sentences of 4 to 7 years (inclusive) for wounding with intent to cause GBH. In total, these offences account for around 11% of all 4 to 7-year sentences.
32. The impacts of this legislative measure have been estimated based on the Department's long-term prison population forecast. This includes projections on how the mix of offences and sentence lengths will change in the future.
33. There are two key areas of uncertainty with the long-term prison population forecast in the current climate, these are:
- The Government's manifesto commitment to recruit additional police officers
  - The criminal justice system's recovery from COVID-19
34. It is unclear exactly how the recruitment of additional police officers will impact on future sentencing volumes. While it is expected that the additional police resource will result in more convictions, it is unclear how the offence mix of sentences may change. If, for example, the additional police resource will only have a downstream impact on high-volume, low-harm crime, there would be very little effect on the offences and sentence lengths in scope here, as only the most serious Schedule 15 offences are included. However, if the additional police officers recruited result in more serious crimes being investigated and ultimately resulting in a conviction, the cohort in scope of measure (a) could be larger than forecast, resulting in a bigger increase in the prison population than estimated in this IA.
35. For the purposes of this IA, the central assumption is that the offence mix of future prison inflows will be the same as the current prison population and will not change after the recruitment of additional police officers. However, due to the above uncertainties, we have also included high and low scenarios which assume that in the future the profile of prison inflows will change. In the low scenario it is assumed that a higher proportion of convictions of shorter sentences and less serious crimes, this results in there being 5% fewer serious offenders in the cohort affected by measure (a) relative to the central scenario. The high scenario assumes the opposite, a 5% increase in serious offenders above the central scenario. In the low, central and high scenarios it is assumed that the recruitment of additional police officers will result in more convictions of serious offenders than in a scenario where there were no additional police officers recruited.
36. There is uncertainty around how the courts will recover after COVID-19 and therefore when the prison population will return to the levels and offence mix forecast before COVID-19. Option 1 will not have any effect on the prison population until 2024 because of the length of sentences involved and we expect the effects of COVID-19 on the prison population to be small by then. However, it is possible that the population and offence mix may differ to what has been projected.

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

<sup>3</sup> Sentencing Data Tool, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

## Monetised costs

### *Prison Services*

37. It is estimated that this measure will increase the prison population by between 405 and 450 in steady state (which is reached in 2028/29) due to the longer custodial periods served by offenders in the affected cohort. Due to the sentence lengths involved, no impacts will occur in the prison population until 2023/24, when there will be around 30 additional prisoners.
38. The mid to long-term prison population forecast suggests that any policy changes which lead to additional demand on the prison service will require new prison places to be built. There will therefore be construction costs of new-build prisons incurred by this measure in addition to the cost of running an existing prison place for a year, including staffing, estate and other resource costs.
39. The running cost of a prison place in 2020/21 is £41,597. This is based on the published cost per prison place for a Male Category B Trainer prison place in 2018/19<sup>4</sup> inflated to current (2020/21) prices. In total, the running cost of additional prison places over the next 10 years of this provision is estimated to be between £100m and £111m in the low and high scenarios, with a central estimate of around £106m.
40. In order to accommodate the additional prison place demands, an additional 405 to 450 prison places will need to be constructed by 2029/30. It is assumed that the construction cost per each additional new place is £250,000. The total transition cost for the construction of additional prison capacity for this measure will therefore is estimated to be between £102m and £113m.
41. The total cost of this measure to the prison service over the 10-year period is estimated to be £214m in the central scenario and ranges from £203m in the low estimate to £224m in the high scenario.

## Non-monetised costs

### *Prison Service*

42. There are potential wider impacts of this measure that it has not been possible to quantify due to the limited evidence of the impact of longer prison terms.
43. There is a potential transitional risk to prison stability in the period following implementation. Those prisoners sentenced under measure (a) will serve longer in custody than other prisoners given an equivalent sentence prior to the introduction of the policy. This could lead to increased tensions in prison establishments, with consequent impacts on prisoner violence or self-harm.
44. Since this measure is expected to lead to increases in the prison population over time, there is the possibility that this could impact upon crowding if the population increases at a faster rate than expected, and therefore ahead of the timescales for building additional prison capacity. Although crowding is not in and of itself a cause of prison violence, it could impact upon the ratio of staff to offenders and the ability to provide a full regime of activities and time out of cell, a factor associated with increased levels of violence<sup>5 6</sup>. If this were to result, it could also have an associated impact on prisoners' rehabilitation which creates additional costs for the prison service.

### *Offenders and their families*

45. Prisoners remaining in custody for longer could have a negative impact on their families as they will be apart for longer. Living with immediate family post-release also appears to be a protective factor

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<sup>4</sup> Costs per prison place and prisoner by individual prison 2018 to 2019, <https://www.gov.uk/government/statistics/prison-performance-statistics-2018-to-2019>

<sup>5</sup> <https://www.gov.uk/guidance/violence-reduction-in-prison>

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/737956/understanding-prison-violence.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737956/understanding-prison-violence.pdf)

against reoffending<sup>7</sup>; being in prison for longer periods could increase the risk of relationship breakdown thereby removing this protective factor and increasing the risk of reoffending.

46. Prisoners affected by this measure will serve a shorter period on licence to support their transition into the community. It is unknown how this will impact upon successful reintegration into society, but there is a risk that this could increase demand on prisons to provide offending behaviour interventions while in custody and reduce the probation capacity to provide the full range of rehabilitative services. This in turn could impact on the likelihood of the affected offenders reoffending and cause additional costs for the prison service.

#### *Health and social care*

47. NHS England/Wales & NHS Improvement (NHSE/I) are responsible for commissioning and delivering health services in prisons in England and Wales. With some prisoners in custody for longer, there will be an impact on the provision of healthcare in prison, which has higher costs than provision of healthcare in the community. It has, however, not been possible to quantify this.
48. Ageing prisoners in particular currently require social care to be provided in custody. While there will be a reduced period in the community over which any care is required, the costs of social care in custody can be higher, so this could result in a net cost to DHSC and local authorities in England, and to the Welsh Government. Again, it has not been possible to quantify this.

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

#### Monetised benefits

##### *Probation Service*

49. Under an SDS, an offender will spend a proportion of their total sentence in custody – this is half for the vast majority of people on an SDS and two-thirds for the most serious sexual and violent offenders sentenced to 7 years or more – and the remainder under licence supervision in the community. Because of this, any percentage increase in the proportion of the sentence spent in custody will result in an equal percentage reduction in the proportion of sentence on licence.
50. This means there will be between 405 and 450 fewer offenders under licence supervision in 2029/30 based on the increases in the prison population detailed in paragraph 37.
51. Although the shorter licence periods for the cohort affected by measure (a) will result in a reduction in the total number of offenders under probation service supervision at any time, each offender will still undergo much of the same probation activity as under the current sentencing framework. This means any savings will not be as much as the full cost of a single offender's cost to the probation service in a year. The saving to the probation service for shorter licence periods will depend on the length of the original sentence and the percentage change to licence lengths relative to this. For example, decreasing licence periods by 5% of the total sentence length for short sentences (1 year or less, for illustrative purposes) would have a very small monetary benefit relative to the original cost to the probation service.
52. For this cohort, the average benefit per offender per year is £3,745<sup>8</sup>. This results in a total saving to the probation service of between £6.0m and £6.7m over the next 10 years.

#### Non-monetised benefits

##### *Victims and the general public*

53. Holding the most serious SDS prisoners in custody until the two-thirds point will ensure victims and the wider public are protected for longer, through the offenders' incarceration, and enable victims to

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<sup>7</sup> <https://www.gov.uk/government/publications/results-from-the-surveying-prisoner-crime-reduction-survey>

<sup>8</sup> Internal cost estimate specific to offenders in these cohorts

feel safe for longer. These offenders will still be subject to stringent licence conditions and liable to be recalled to prison for the remaining third of their sentence following release, though it is unknown whether a reduced licence period will have any impact on offender rehabilitation or likelihood to reoffend. As this will be a matter of release at a fixed point, not a discretionary decision, victims will continue to have certainty and be able to prepare accordingly, including through requesting specific licence conditions for their protection (such as exclusion zones and non-contact conditions).

54. Longer custodial sentences for dangerous offenders can increase the victim and the general public's confidence in the justice system. This may be a contributing factor in securing cooperation from victims or witnesses to crimes, such as in giving evidence or encouraging victims to come forward in the first place as they believe offenders will receive a fair and appropriate punishment for their crimes.

#### *Police service*

55. Under this measure, offenders will be released later, reducing the period over which the police will be responsible for monitoring them through Multi-Agency Public Protection Arrangements (MAPPA). There will be little impact in respect of sex offenders, who will be subject to sex offender registration for life.

#### *Local Authorities*

56. Local authorities who provide services to these offenders when released into the community may incur savings due to the reduced time these offenders will spend in the community. This primarily applies to accommodation services but will also be the case for any service provided by Local Authorities to offenders after release from custody.

**b) Move the earliest point of discretionary release for child sex offenders sentenced to a Sentence for Offenders of Particular Concern (SOPC) from the halfway to the two-thirds point of the sentence**

57. The SOPC was introduced in 2015 and because of this there is only limited data available to inform modelling assumptions and forecast future inflows to the prison service. On average there have been around 220 SOPC convictions per year since 2016<sup>9</sup>. There has been some fluctuation in volumes between years, but this is to be expected as the sentence type is very new and the offences it covers are relatively low volume.
58. It is assumed that the number of SOPC convictions per year will remain at 220 per year over the forecast period in the central scenario. As with the modelling in measure (a), we have also calculated the impacts for low and high scenarios. It has been assumed that for the low and high scenarios there will also be a 5% decrease or increase respectively in the number of SOPC offenders per year.
59. It is assumed that sentencer behaviour remains consistent, including:
- Convictions for offences that qualify for a SOPC will be given an EDS, life sentence and SOPC in the same proportions as they are now
  - The average length of a SOPC will remain the same
60. Anyone serving a SOPC can only be released before the end of their sentence at the discretion of the Parole Board. The average success rate for a single application to the Parole Board is 23%<sup>10</sup>. It has been assumed that the release rate of SOPC applications for early release via Parole Board will also be 23%. It is also assumed that each individual will only have one application to the Parole Board during their sentence, and that this will be at the earliest point they can be released from – halfway under current rules and two-thirds under the proposed change – and if they are not released at this point they will only be released at the end of their sentence.

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<sup>9</sup> Internal analysis, data on SOPCs is not published

<sup>10</sup> Estimate using figures published in the Parole Board Annual Review 2018/19, <https://www.gov.uk/government/publications/the-parole-board-for-england-wales-annual-report-and-accounts-201819>

61. These assumptions have been made due to a lack of granular data on SOPC Parole Board applications and to simplify the modelling, as it is possible that an offender could make multiple applications for release via Parole Board whilst in custody. As a result, we assume 77% of SOPCs will remain in custody until the end of their sentence and so will spend the exact same amount of time in prison and under licence supervision regardless of the change proposed in measure (b).
62. If the assumptions around Parole Board are incorrect it could change the costs of this measure. If the actual release rate via Parole Board is lower for SOPCs than the average prisoner then the costs in this IA will be an underestimate. However, if in reality SOPCs make multiple applications for release via Parole Board then the impacts in this IA would be an overestimate.
63. However, the above assumptions are a simplification of how actual SOPC prisoners may behave in terms of Parole Board applications. There is no granular data on how many applications are made to the Parole Board by SOPCs during their time in custody. It is possible that multiple applications would be made between the earliest release point and the end of the sentence, especially given the average SOPC is 12 years. By increasing the earliest possible release point on a SOPC from halfway to two-thirds, there are, on average, two fewer years available for offenders on a SOPC to apply for release via Parole Board during their time in custody. There would also be a shorter time period between the earliest conditional release point and the end of the sentence under measure (b). This could lead to fewer applications to the Parole Board in steady state. However, this could not be quantified and was not incorporated into the modelling.

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

### Monetised costs

#### *Prison Service*

64. As described above, the modelling assumes that 23% of SOPC offenders will be released at the earliest possible release point via Parole Board, so spending an additional 17% of their sentence in custody under the proposal in measure (b) compared to under the current sentencing framework. This represents an average of around two additional years in custody when a SOPC offender is released at the two-thirds point rather than halfway through their sentence.
65. Due to the long average sentence length of a SOPC, measure (b) will have no sizeable impact on the prison population until 2027/28, where there will be an increase of around 50 prison places. By the end of the forecast period, 2029/30, this impact is expected to increase to between 95 and 105 additional prison places, with 100 additional SOPC offenders in custody under the central scenario.
66. As with measure (a), the mid to long-term prison population forecast suggests any policy changes which lead to additional demand on the prison service will require new prison places to be built. There will be, therefore, construction costs of new-build prisons incurred by measure (b) in addition to the cost of running an existing prison place for a year, including staffing, estate and other resource costs.
67. The running cost of a prison place in 2020/21 is £41,597. This is based on the published cost per prison place for a Male Category B Trainer prison place in 2018/19 inflated to current (2020/21) prices. In total, the running cost of the required additional prison places over the next 10 years of measure (b) is estimated to be between £12m and £14m.
68. In order to accommodate the additional prison place demands, an additional 95 to 105 prison places will be required by 2030. It is assumed that the construction cost per each additional new place is £250,000. The total transition cost for the construction of additional prison capacity for this measure is between £21m and £23m over the forecast period.
69. In summary, the total cost of measure (b) to the prison service over the 10-year period is estimated to be between £33m and £37m, with a central estimate of £35m.

### Non-monetised costs

## *Prison Service*

70. There are some potential wider impacts of measure (b) that it has not been possible to quantify due to the limited evidence of the impact of longer prison terms. There is some evidence that indicates that prisoners in custody for longer come to terms with their offending and are able later in their sentence to begin constructive activities. However, research also shows that serving a life sentence can be a risk factor linked to an increased risk of self-harm while in prison (as well as being on remand/unsentenced) which creates additional costs for the prison service. It is possible that the findings relating to life sentences could also apply to SOPCs as they also typically comprise of very long custodial periods.
71. There is a potential transitional risk to prison stability in the period following implementation. Those prisoners sentenced under measure (b) will serve longer in custody than other prisoners given an equivalent sentence prior to the introduction of measure (b). This could lead to increased tensions in prison establishments, with consequent impacts on prisoner violence or self-harm.
72. Since measure (b) is expected to increase the prison population over time, there is the possibility that this could impact upon crowding if the population increases at a faster rate than the expected timescales for building additional prison capacity. Although crowding is not in and of itself a cause of prison violence, it could impact upon the ratio of staff to offenders and the ability to provide a full regime of activities and time out of cell, a factor which is associated with increased levels of violence. If this were to result, it could also have an associated impact on prisoners' rehabilitation and cause additional costs for the prison service.

## *Offenders and their families*

73. Prisoners remaining in custody for longer could have a negative impact on their families as they will be apart for longer. Living with immediate family post-release also appears to be a protective factor against reoffending; being in prison for longer periods could increase the risk of relationship breakdown thereby removing this protective factor and increasing the risk of reoffending.
74. Prisoners affected by measure (b) will serve a shorter period on licence to support their transition into the community. It is unknown how this will impact upon their successful reintegration into society, but there is a risk that this could increase demand on prisons to provide offending behaviour interventions while in custody and reduce the probation capacity to provide the full range of rehabilitative services. This in turn could impact on the likelihood of the affected offenders reoffending.

## *Health and social care*

75. NHS England/Wales & NHS Improvement (NHSE/I) are responsible for commissioning and delivering health services in prisons in England and Wales. With some prisoners in custody for longer, there will be an impact on the provision of healthcare in prison, which has higher costs than the provision of healthcare in the community. It has not, however, been possible to quantify this.
76. Ageing prisoners in particular currently require social care to be provided in custody. While there will be a reduced period in the community over which any care is required, the costs of social care in custody can be higher, so this could result in a net cost to DHSC and local authorities in England, and to the Welsh Government. Again, it has not been possible to quantify this.

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

### Monetised benefits

#### *Probation Service*

77. Under measure (b), any SOPC offender released before the end of their sentence is assumed to now spend an additional 17% of their sentence in custody and therefore the same amount of time not

under licence supervision in the community. As the majority of SOPCs will continue to be released at the end of their sentence and serve one year under licence supervision, these individuals will not have any impact on the probation service.

78. This means there will be around 50 fewer offenders on licence in 2027/28 and 95 to 105 fewer in 2029/30, based on the increases in the prison population detailed in paragraph 68.
79. Although the shorter licence periods for the cohort affected by measure (b) results in an overall reduction of the number of offenders under probation service supervision at any time, each offender will still undergo much of the same probation activity as under the current sentencing framework. This means any saving to the probation service will be less than the full cost of a single offender's cost to the probation service in a year. The saving to the probation service for shorter licence periods depends on the length of the original sentence and the percentage change to licence lengths relative to this. For example, decreasing licence periods by 5% of the total sentence length for short sentences (1 year or less, for illustrative purposes) would have a very small monetary benefit relative to the original cost to HMPPS.
80. For this cohort, the average benefit per probation caseload reduction is £3,745 per year. This results in a total saving to the probation service of £0.7m to £0.8m over the next 10 years.

### Non-monetised benefits

#### *Parole Board*

81. Under measure (b) the Parole Board is expected to receive fewer applications from SOPCs, due to each application being pushed back two years under an earliest conditional release point of two years. As outlined in paragraphs 63 to 66, it was not possible to accurately model Parole Board applications for SOPCs and as such the savings from measure (b) have not been calculated. It is expected that the reduction in applications to Parole Board caused by this measure would be negligible in terms of the total number of applications they receive per year.
82. As the cost of a Parole Board application is expected to rise in line with inflation, there is no cost or benefit in real terms of an individual application being made two years in the future under measure (b).

#### *Victims and the general public*

83. By increasing the earliest possible release point of SOPC offenders to the two-thirds point will ensure victims and the wider public are protected for longer, through the offenders' incarceration, and enable victims to feel safe for longer. Unlike the SDS offenders impacted by measure (a), anyone serving a SOPC can only be released from custody via Parole Board. As such, only offenders that are not deemed to pose a danger to the public are released before the end of their original sentence. So, although the change will mean longer times in custody on average for sexual SOPC offenders, which in turn protects the public from reoffending for longer, the SOPC already includes a discretionary mechanism which prevents dangerous individuals automatically being released early into the public.
84. Longer custodial sentences for dangerous offenders can increase the victim and the general public's confidence in the justice system. This may be a contributing factor in securing cooperation from victims or witnesses to crimes, such as in giving evidence or encouraging victims to come forward in the first place as they believe offenders will receive a fair and appropriate punishment for their crimes.

#### *Local Authorities*

85. Local authorities who provide services to these offenders when released into the community may incur savings due to the reduced time these offenders will spend in the community. This primarily applies to accommodation services but will also be the case for any service provided by Local Authorities to offenders after release from custody.

## F. Risks and assumptions

86. The impacts estimated in this IA are based on certain assumptions. These assumptions, and the associated risks, are described in Table 1 below.

**Table 1: Risks and Assumptions**

<b>Assumptions</b>	<b>Risks / uncertainties</b>
The policy will come into effect in Autumn 2021, and for the purposes of this IA that has been assumed to be October 2021.	Any delay to the implementation of the policy will delay the impacts by an equal amount of time.
Future SDS volumes are based on internal projections of the prison population over the next 10 years. These projections attempt to account for how the mix of sentence lengths and offences will change over time.	It is difficult to predict future changes in the types of offences being committed and how this will impact the sentence lengths imposed by sentencers. If there are significant changes in the average length of sentence imposed it could affect the number of sentences of 4 to 7 years.
The future number of SOPCs given for sexual offences is based on the number given each year since 2016. It is assumed that the number of SOPCs given out each year will remain constant based on the average per year since 2016.	This is the only data available on all offenders receiving SOPCs since their introduction. Due to the small sample size available to build assumptions from, future SOPC volumes could change as the sentence becomes more embedded. In addition to this the offences that qualify for a SOPC (both sexual and terrorism-related) are extremely serious offences and annual volumes are subject to fluctuation.
Sentencing behaviour will remain the same after the introduction of these measures.  This means that SDS, EDS and SOPC sentences will be given in the same proportions as they are currently.	As the custodial period of certain SDS and SOPC sentences will be longer under the measures proposed in this IA it is possible that the total sentence length given could be changed so that the time spent in custody is the same as under the current sentencing framework.
Offender behaviour will remain the same in terms of: <ul style="list-style-type: none"> <li>• Offending volume trends continuing as forecast based on observed trends</li> <li>• Plea behaviour in courts</li> </ul>	It is possible that the longer custodial sentences proposed in this IA could change offender behaviour. If offenders are aware that they face longer in custody for their crimes under the proposed sentencing framework, it is possible they could be deterred from offending in the first place. If not, they may be more likely to enter a guilty plea in order to try to reduce their overall time spent in custody. If offenders do exhibit these behaviours after the proposals are implemented then this IA would be overestimating the impacts.
There is still uncertainty around the criminal justice system's recovery from COVID-19.  Three scenarios have been modelled for the criminal justice system's COVID-19 recovery. In the scenario where recovery is the slowest, the effects of COVID-19 on the prison population are expected to be small by the time these proposals have any impact.	The closure of courts during the COVID-19 pandemic resulted in a backlog of trials which will need to be worked through. This means that the prison population will be lower in the short term than previous, pre-COVID-19, forecasts estimated. Both proposals in this IA effect offenders serving relatively long sentences and the initial impacts aren't felt for at least two years after implementation. We expect the effects of COVID-19 on the prison population to be small by the time these proposals have an impact, but it is possible that the population and offence mix may differ to what has been projected.

<p>The recruitment of additional police officers will not change the offence mix of the future prison population in the central scenario.</p> <p>The low scenario assumes that serious sexual and violent offenders (those in scope of the proposals in this IA) will represent 5% less of prison inflows in the future.</p> <p>The high scenario assumes there are 5% more serious sexual and violent offenders in future prison inflows.</p>	<p>Before COVID-19 there were prison population projection scenarios based on how the additional police resource is allocated and how this effects the mix of offences and sentence length of future sentences – these were:</p> <ul style="list-style-type: none"> <li>• Current Focus – this assumed that the characteristics of future convictions remains the same as in recent years</li> <li>• Serious Focus – this assumed the police would focus on high harm, low volume crime, meaning a smaller increase in the number of sentences, but the individuals sentenced were for more serious crimes and received longer sentences than the current average</li> <li>• Visible Policing – this assumed the opposite to Serious Focus and that the additional resource would result in more sentences of low harm, high volume offences</li> </ul>
<p>The running cost of a prison place is £41,596.95 per year. This is based on the most recent prices published by HMPPS for 2018/19 inflated to represent the current price in 2020/21.</p>	<p>Prison unit costs cover the day to day running costs of a prison only, and do not incorporate any capital costs associated with construction, investment and costs associated with any developing or contracted out services or rehabilitative activities these prisoners might undertake while in custody.</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 two years before it is needed and the costs will fall over this same period.</p>	<p>This cost is an average based on the total amount of money allocated to the construction of 10,000 additional prison places over the next 10 years.</p> <p>The exact construction profile will vary depending on when additional prison capacity is needed. This depends on a range of factors, primarily natural changes in the prison population and future policy changes that increase or decrease the prison population.</p> <p>Because of this, it isn't possible to allocate precise prison places and costs for each additional place at this point.</p>
<p>The benefit to the probation service is £3,745 per place. This is based on 2020/21 prices.</p>	<p>This benefit is based on the marginal saving to the probation service of an offender serving less time on licence after being released from custody. Unlike with prison costs, there isn't a full year benefit with probation. This is because during one individual's time on probation there will be a similar amount of probation intervention under the shorter licence periods proposed in this IA as under the current sentencing framework. A large proportion of the costs of a full licence period will be spent by the probation service when offenders serve slightly shorter licence periods.</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>

## Sensitivity Analysis

87. As noted above, the impacts in this IA have been calculated on the basis of three scenarios. As a result, we have not conducted any separate sensitivity analysis of the main results.

## **G. Direct costs and benefits to business calculations**

88. There are not assumed to be any direct costs or benefits to business for measures (a) and (b).

## **H. Impact on small and micro businesses**

89. There are not assumed to be any direct costs or benefits to business for measures (a) and (b).

## **I. Wider Impacts**

### **Environment**

90. The construction of any new prison places required because of the options in this IA will impact the environment negatively. As the construction profile of the additional 10,000 prison places is not yet fully planned out, it is not yet possible to determine the exact environmental impact of the prison places required to meet the additional demand caused by the proposals in this IA.

91. However, any new prisons that the MoJ constructs must now comply with a range of environmental legislation including the Climate Change Act which requires the department to reduce our emissions to net zero by 2050. As any new prison buildings will be in operation well beyond 2050 they must be “net zero ready”. This will involve reducing their operational energy demand to a minimum from day one and continuing to reduce energy usage throughout the life of the building. Therefore, once constructed, the new prison buildings will have a smaller impact on the environment than existing prison buildings.

### **Equalities**

92. A full Equalities Impact Assessment will be published alongside this IA.

### **Better Regulation**

93. These proposals are exempt under the Small Business Enterprise and Employment Act 2015 and will not count towards the department’s business impact target. Additional public-sector costs will be met by MoJ and HMPPS.

## **J. Potential trade implications of measure**

94. There are not assumed to be any direct costs or benefits to business for measures (a) and (b).

## **K. Monitoring and Evaluation**

95. The impact of the changes will be monitored by MoJ and HMPPS jointly.