

<b>Title:</b> New offence for offenders unlawfully at large following recall (UAL) and increase of maximum sentence for offenders who fail to return from release on temporary licence (ROTL) impact assessment  <b>IA No: MoJ008/14</b>  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>	
	<b>Date: 05/02/2014</b>	
	<b>Stage:</b> Introduction of Legislation	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Primary legislation	
<b>Contact for enquiries:</b> general.queries@justice.gsi.gov.uk		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> Not Applicable

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
Unknown	£0	£0	No	Out of scope

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

Being unlawfully at large following recall to custody (UAL)  
If no other offence is committed while unlawfully at large, offenders can only be required to serve the outstanding part of their original sentence, as this is the only requirement that has been imposed on them by a court. There is no legal power to detain them beyond the end of the requirements of that sentence unless they are prosecuted and imprisoned for another offence. It is not a separate offence to remain unlawfully at large. Therefore, currently there is no strong incentive for those who are recalled to custody to comply with the recall, and courts do not have any power to punish those who seek to avoid serving the remainder of their sentence.

Failure to return from release on temporary licence (ROTL)  
In 2012 approximately 100 offenders were convicted for failing to return to custody from release on temporary licence (ROTL). The current maximum custodial sentence for the offence of failure to return from ROTL is six months. Arguably given the 2012 conviction data, this is not a strong enough incentive for some offenders released on ROTL to return to custody, and sentencers do not have enough power to adequately punish those who fail to return. Given the proposed two years maximum custodial sentence for the comparable offence of being UAL, if left unchanged, the current sentencing provision for the ROTL offence will be inconsistent with that for the new offence.

**What are the policy objectives and the intended effects?**

Being unlawfully at large following recall to custody (UAL)  
To deter offenders who remain unlawfully at large after recall from licence from failing to return to custody and ensure that those who deliberately seek to avoid serving the remainder of their sentence can be properly punished once they are returned to custody.

This punishment comes from the fact that they must serve the sentence for the new offence before being considered for release by the Parole Board, e.g. if the maximum two year sentence is imposed for the new offence then a minimum period of twelve months will have to be served in custody before the offender can be considered for re-release by the Parole Board. Furthermore, if the offender was coming to the end of the original sentence when the licence was revoked and the outstanding period on recall left to serve is short, the offender will not be released until they have served the custodial period of the new sentence.

Most recalled offenders are returned to custody within a few days and are generally unaware that their licence has been revoked until they are arrested. The offence will not apply in those cases but will catch those who know, or ought to know, that they have been recalled but fail to hand themselves in and who take steps to evade recapture.

Failure to return from release on temporary licence (ROTL)  
To further deter offenders from failing to return from ROTL, as failing to return undermines the criminal

justice system. We want to send a strong message (both to deter and punish) that failure to return from ROTL is unacceptable and warrants a significant custodial sentence. We want to give sentencers greater discretion to impose longer sentences where offenders abuse the privilege of ROTL by failing to return.

The intended effect is to reduce both the number of offenders UAL and those who fail to return whilst on a temporary licence, and to punish those who do.

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

Option 0 - **Do nothing**

Option 1 – **Create a summary-only offence with a maximum sentence of 6 months and/or a fine for ‘being unlawfully at large following recall to custody’. Maintain the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of “failure to return while on temporary licence (ROTL)” at its current level.**

Option 2 – **Create an either-way offence with up to 12 months custody and/or a fine for ‘being unlawfully at large following recall to custody (UAL)’ and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’ from 6 months custody and/or a fine to 12 months custody and/or a fine.**

Option 3 - **Create an either-way offence with up to 2 years custody and/or a fine for ‘being unlawfully at large following recall to custody (UAL)’ and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’ from 6 months custody and/or a fine to 2 years custody and/or a fine.**

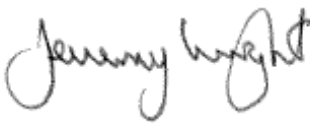
We propose to take forward Option 3. As this has the most potential to be punitive, it can potentially create a stronger deterrent effect, and provides courts with a higher maximum sentence. Option 3 has greater financial implications than the other two options due to the higher maximum custodial sentence for both offences, which can potentially result in greater NOMS costs. However we expect the difference in costs to be small.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</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 SELECT SIGNATORY:



Date: 05/02/2014

**Description:** Create a new offence for ‘being unlawfully at large following recall to custody (UAL)’ with a maximum sentence of 6 months custody and/or a fine. Maintain the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of “failure to return while on temporary licence (ROTL)” at its current level.

## FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate			£100k	

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

The creation of a new offence for ‘being unlawfully at large following recall to custody’ is likely to result in costs to HMCTS, Crown Prosecution Service and the Legal Aid Agency as offenders will be prosecuted for this offence. Overall, **annual costs to the criminal justice system (CJS) are estimated to be around £100k.**

Offenders who would have either been released relatively quickly by the Parole Board or who are coming to the end of their original sentence will have to serve at least the custodial period of the new sentence before they are released. Overall, we do not expect the increase in NOMS costs to be significant. It is difficult to estimate the precise impact because of a number of variables which include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case – including sentence length. However, there would be a real punitive impact on those who commit the most serious UAL offences.

This option has the smallest financial implications as the offence is summary-only, and CJS costs are expected to be lower compared to the other options. Moreover, no costs are generated in relation to the ROTL offence as this option does not make any changes to the current sentencing provision for this group of offenders.

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

None identified.

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

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

None identified.

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

The new offence will allow the courts to determine the minimum length of time that must be served before an offender who has been UAL can be considered for re-release. This is most likely to affect to the greatest degree those who would have previously only received a FTR (28 days) or those who were already close to

their sentence expiry date who would have had only a short recall period to serve but instead will be required to complete the sentence for the new offence. It will also have a punitive impact on offenders subject to a standard recall as the Parole Board will not be able to direct their release whilst they are serving the custodial element of the new sentence.

The new offence will in addition create a punitive measure for offenders who remain UAL after recall from licence as currently 'being unlawfully at large following recall' is not a separate offence and offenders can only be required to serve the outstanding part of the original sentence in custody. There may be a deterrent effect which could result in a reduction of offenders remaining UAL.

**Key assumptions/sensitivities/risks**

**Discount rate (%)**

Each case will be considered on its merits, however we assume that only the most serious cases will be prosecuted – as a general rule we assume this will be offenders who have been UAL for over 28 days. We have also assumed that all offenders will be given a custodial sentence. Furthermore, we assume that, given the maximum sentence in this option aligns with the maximum six month sentence for the existing Prisoners (Return to Custody) Act 1995 offence, the majority of offenders are likely to be given an average custodial sentence which is equivalent in length to the 2012 average sentence for the Prisoners (Return to Custody) Act 1995 offence of 'failure to return while on temporary licence (ROTL)' – 1.8 months. This is the nearest comparable existing offence. We also assume the outstanding part of the original sentence to be served on recall will be similar in length to the 2010 average time in custody following recall – 8.1 months.

The failure of these assumptions might result in greater costs if the actual average sentence length given is higher and a greater number of offenders are prosecuted and/or given the maximum penalty. This would be dependent on the number of offenders who are unlawfully at large, and sentencer behaviour.

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	No	OUT

**Description:** Create a new offence for 'being unlawfully at large following recall to custody (UAL)' with a maximum sentence of 12 months custody and/or a fine, and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of 'failure to return while on temporary licence (ROTL)' from 6 months custody and/or a fine to 12 months custody and/or a fine.

## FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate			£200k	

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

As with option 1, we expect the creation of a new offence for 'being UAL' to result in an increase in costs to HMCTS, Crown Prosecution Service and the Legal Aid Agency. We also expect the increase to the maximum sentence for the ROTL offence to lead to higher CJS costs as this offence is now triable either way. Overall, **additional annual costs to the CJS are estimated to be around £200k.**

In relation to the UAL offence, offenders who would have previously either been released relatively quickly by the Parole Board or who are coming to the end of their original sentence will have to serve at least the custodial period of the new sentence before they are released. However, we do not expect the increase in NOMS costs to be significant. It is difficult to estimate the precise impact because of a number of variables which include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case – including sentence length. However, we expect the higher maximum penalty (in comparison to option 1) to have a more punitive impact on those who commit the most serious UAL offences.

In relation to the ROTL offence, the increase in the maximum custodial sentence is likely to lead to small additional NOMS costs in the form of prison places. However, we have not quantified these costs (see below).

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

The additional NOMS costs due to the increase in the maximum sentence for the ROTL offence have not been quantified. This is because we assume that, as with the UAL offence, based on current sentencing practice, only a small number of offenders will be given the maximum penalty. This will be up to the independent judiciary, who will take into account all of the relevant factors in the case before deciding whether to make use of the increased maximum. The actual increase in the time spent in custody depends on the length of the original sentence.

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

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

None identified.

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

As with option 1, although the magnitude of the benefits is likely to be greater due to the higher maximum sentence for 'being UAL following recall'. Similar benefits from stronger punitive measures and deterrent effects also apply in relation to the change to the maximum penalty for the ROTL offence.

**Key assumptions/sensitivities/risks****Discount rate (%)**

As with option 1, except for the fact that whilst most offenders UAL will be given an average custodial sentence which is similar in length to the 2012 average sentence for the Prisoners (Return to Custody) Act 1995 offence of 'failure to return while on temporary licence (ROTL)', others may receive the maximum penalty. As with option 1, the failure of these assumptions may result in greater costs. Given the maximum sentence length, risks are likely to be higher than with option 1.

In relation to the ROTL offence, we assume no change in the total number of proceedings and the proportion of those who are given a custodial sentence. We also assume that only a very small number of offenders will be affected by the increase in the maximum sentence and the offence becoming triable either way. The risk is that additional CJS and/or NOMS costs may be greater than expected if a higher number of offenders are prosecuted and/or given a custodial sentence and/or given a higher custodial sentence.

Given the change to the ROTL offence and the higher maximum penalty for the UAL offence, overall risks are greater than with option 1.

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	No	OUT

**Description:** Create a new offence for 'being unlawfully at large following recall to custody (UAL)' with a maximum sentence of 2 years custody and/or a fine, and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of 'failure to return while on temporary licence (ROTL)' from 6 months custody and/or a fine to 2 years custody and/or a fine.

## FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		£200k	

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

We expect the same increase in CJS costs as with option 2 as under both options the two offences are made triable either way and we assume that the same proportions of offenders will be sent to Crown Court.

We expect an increase in NOMS costs compared to option 2 as this option allows for a higher maximum penalty. In relation to the UAL offence, offenders who would previously have either been released relatively quickly by the Parole Board or who are coming to the end of their original sentence will have to serve at least the custodial period of the new sentence before they are released. Overall, we expect the increase in NOMS costs to be relatively small. It is difficult to estimate the precise impact because of a number of variables which include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case – including sentence length. However, we expect the large increase in the maximum penalty (in comparison to options 1 and 2) to have a punitive impact on those who commit the most serious UAL offences. As with option 2, we have not quantified additional NOMS costs generated by the increase in the maximum custodial sentence for the ROTL offence.

Overall, **additional annual costs to HMCTS, Crown Prosecution Service and the Legal Aid Agency are estimated to be around £200k.** These do not include NOMS costs.

Although costs appear to be similar to option 2, there is the potential for an increase in NOMS costs because of the higher maximum sentence available for both the UAL and ROTL offences over option 2 and, with respect to option 1, an increase in CJS costs as both offences can be tried in the Crown Court. However, we estimate this difference to be small, in relation to the other proposed options, as we expect very few offenders to be sent to the Crown Court and given the maximum sentence. This will be at the discretion of the independent judiciary.

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

As with option 2.

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

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

None identified.

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

As with option 2, although we expect the magnitude of the identified benefits to be greater given the higher maximum penalty for both offences, which should provide sentencers with the greatest range of options. Offenders will not be considered by the Parole Board for release from the original sentence until they have served the custodial period of the new sentence. Sentencers will have the option to impose a maximum two year penalty which would mean the offender would have to serve at least one year in custody before being considered for release.

**Key assumptions/sensitivities/risks****Discount rate (%)**

As with option 2, although we expect the magnitude of the identified risks to be greater given the higher maximum penalty for both offences.

**BUSINESS ASSESSMENT (Option 3)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	No	OUT



# Evidence Base (for summary sheets)

## Current position:

### Being unlawfully at large following recall to custody (UAL)

1. There are five different situations where an adult offender can be considered to be unlawfully at large (UAL):
  - (i) When a prisoner escapes from lawful custody. This includes an escape from an open prison.
  - (ii) When a defendant has been released on bail in criminal proceedings and fails, without reasonable cause, to surrender to custody.
  - (iii) When a prisoner is released temporarily on licence (e.g. for Resettlement Day Release, Resettlement Overnight Release, Child Resettlement or a Special Purpose Licence) and fails to return without reasonable excuse.
  - (iv) Offenders who have served the custodial part of their sentence, have been released on licence and have been subsequently recalled for breaches of their licence, but have absconded.
  - (v) Offenders who are released early from the custodial part of their sentence on home detention curfew but are recalled and subsequently abscond.
2. All of the above, excluding (iv) and (v), are criminal offences:
  - (i) Escape from custody or prison breaking – an offence at common law. This offence is indictable only and the maximum punishment is life imprisonment.
  - (ii) Failure to surrender to custody while on bail – contrary to section 6 of the Bail Act 1976. This is an either way offence. In the magistrates' court it carries a maximum sentence of up to three months imprisonment and/or a level 5 fine (currently up to £5,000). In the Crown Court it carries a sentence of up to 12 months imprisonment and/or a fine.
  - (iii) Failure to return while on temporary licence – contrary to section 1 of the Prisoners (Return to Custody) Act 1995. This is a summary only offence with a punishment of up to six months imprisonment and/or a level 5 fine.
3. There is no separate offence for absconding while on licence after an offender has served the custodial part of the sentence. When an offender fails to comply and the Probation Service considers that the risk of further offending can no longer be managed in the community, Probation refers the case to the Secretary of State who considers if the licence should be revoked and the offender returned to custody. Offenders whose behaviour discloses a serious risk will be recalled on standard recall. These can only be released by the Parole Board, by the Secretary of State if he is of the opinion that the offender's detention is no longer necessary for the protection of the public or on expiry of the offender's sentence. Offenders whose behaviour discloses a lower risk may be eligible for automatic release once they have served 28 days back in custody.
4. If the offender has not committed any further offences while UAL (as in situations iv and v above) they can only be required to serve the outstanding part of their original sentence, as this is the only requirement that has been imposed on them by a court. There is no legal power to detain them beyond the end of the requirements of that sentence unless they are prosecuted and imprisoned for another offence. It is not a separate offence to remain UAL.
5. Once an offender is UAL their sentence stops running. Therefore, once they are re-detained they are liable to only serve the period of the sentence which was outstanding when they absconded. Whilst offenders do not benefit by being UAL from the original sentence, they also do not currently receive an extra penalty. It is only the remaining part of the sentence that is liable to be served, no matter how long the offender remains UAL before being returned to custody.
6. Once a recalled prisoner is returned to custody, their case must be referred to the Parole Board. Latest statistics indicate that the average time spent in custody by recalled offenders, before being re-released, was 8.1 months in 2010. If the Parole Board is satisfied as to risk, it must direct an

offender's immediate re-release. In cases where an offender has been at large for several years and they can evidence that they have been living a law abiding life, maybe with a job and family, it would be difficult to argue that public protection requires their continued detention. It is therefore perfectly possible that some of the recalled offenders who have been UAL for some time (and living abroad) could, if extradited, be re-released relatively quickly.

7. Over the period April to June 2013 4,348 offenders were recalled to custody. Of these, we estimate that around 200 were UAL for over 28 days before being returned to custody<sup>1</sup>.

#### Failure to return from release on temporary licence (ROTL)

8. As mentioned above, failure to return from ROTL is already an offence contrary to section 1 of the Prisoners (Return to Custody) Act 1995. It is a summary only offence with a punishment of up to six months imprisonment and/or a level 5 fine (currently up to £5,000).
9. Release on temporary licence is a temporary release from custody which enables offenders to participate in activities outside of the prison establishment which contribute to both their:
  - eventual resettlement; and
  - risk management on release (by identifying the necessary controls which should be put in place in the community).
10. There are four types of temporary licence; resettlement day release (RDR); resettlement overnight release (ROR); childcare resettlement licence (CRL) and special purpose licence (SPL). All require a robust risk assessment prior to release.
11. Release on temporary licence has a low failure rate – there were only 431 failures in 12/13 which account for less than 1% of all ROTL releases. Over half of the failures were recorded as non-returns; relatively few offenders were for committing an offence or were recorded as late returns. There were around 100 convictions for the offence of failure to return from temporary release in 2012 and of these roughly 85% received a custodial sentence<sup>2</sup>.

#### **Policy objective:**

##### UAL

12. The aim of the policy is to deter offenders who are recalled to custody from absconding, and ensure that those who choose to avoid serving their sentence are properly punished once they are returned to custody. The precise impact of the new offence will depend on the circumstances of the individual case, and sentencing decisions taken by the judiciary. The punishment will be that, if prosecuted with the offence of being UAL and given a custodial sentence, the custodial period of the new sentence will have to be served before the offender can be considered by the Parole Board for re-release – and in some circumstances the new sentence will go beyond the end of the original sentence. Ultimately, the intended effect is that this should reduce the number of offenders UAL.

##### ROTL

13. The aim of the policy is to send a strong message (both to deter and punish) that failure to return from ROTL is unacceptable and warrants a significant custodial sentence. We want to give sentencers greater discretion to impose longer sentences where offenders abuse the privilege of ROTL by failing to return and we want to harmonise the penalties for this existing offence with the penalties for the new offence. The intended effect is to reduce the number of offenders who fail to return and to punish those who do.

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<sup>1</sup> This is based on internal MoJ management information

<sup>2</sup> Source: further breakdown of published statistics from Criminal Justice Statistics – JSAS.

## Description of options considered (including do nothing):

14. Three policy options have been identified for a new offence and their potential costs and impacts on the prison population and the criminal justice system.
  - Option 0 - Do nothing
  - Option 1 – Create a summary-only offence with a maximum sentence of 6 months and/or a fine for ‘being unlawfully at large following recall to custody’. Maintain the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of “failure to return while on temporary licence (ROTL)” at its current level.
  - Option 2 – Create an either-way offence with up to 12 months custody and/or a fine for ‘being unlawfully at large following recall to custody (UAL)’ and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’ from 6 months custody and/or a fine to 12 months custody and/or a fine.
  - Option 3 - Create an either-way offence with up to 2 years custody and/or a fine for ‘being unlawfully at large following recall to custody (UAL)’ and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’ from 6 months custody and/or a fine to 2 years custody and/or a fine.

## Monetised and non-monetised costs and benefits of each option:

### Option 0 - Do nothing

15. Under this option there would be no change. Therefore additional costs and benefits of this option are zero.

**Option 1 – Create a summary-only offence with a maximum sentence of 6 months and/or a fine for ‘being unlawfully at large following recall to custody’. Maintain the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of “failure to return while on temporary licence (ROTL)” at its current level.**

### Costs

16. The creation of a new offence for ‘being unlawfully at large following recall to custody’ is likely to result in costs to HMCTS, CPS and the Legal Aid Agency as offenders will be prosecuted for this offence.
17. Under this option, we expect that offenders prosecuted for the UAL offence will receive a short custodial sentence. We estimate no impact on NOMS costs due to a number of reasons which we have taken into consideration in our assumptions and, in relation to the UAL offence, include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case. We have also assumed that the average sentence length for the new offence is equivalent in length to that for the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’, given that both would have the same maximum sentence, and it is a comparable offence as the offender is released on licence, albeit temporarily, from custody.
18. We have assumed that prosecutions will be reserved for the most serious cases of UAL. We have taken that to be those who were UAL for more than 28 days. Most recalled offenders are returned to custody within a few days and are generally unaware that their licence has been revoked until they are arrested. The offence will not apply to them but will catch those who know, or ought to have known, they have been recalled but fail to hand themselves in and evade recapture. Based on internal management information we estimate that a maximum of 800 – 900 offenders per annum are UAL for more than 28 days. However, we estimated that only the most serious cases would be prosecuted and sentenced. Based on this our best estimate is that there could be **additional CJS costs of around £100k per annum.**
19. No costs are generated in relation to the ROTL offence as this option does not imply any changes to the current sentencing provision for this group of offenders.

20. The new offence is summary-only; hence all offenders are tried and sentenced at magistrates' courts. Moreover, we have used the following unit costs:
- £420 for legal aid costs per defendant.
  - £150 for CPS costs per defendant<sup>3</sup>.
  - £350 for HMCTS costs per defendant.
21. Note that the CPS and HMCTS costs are subject to change pending further work to provide more robust costs estimates.
22. At present the CPS costs quoted throughout this assessment do not include several categories. Current CPS costs are based on Activity Based Costings (ABC), the primary purpose of which is resource allocation. The key limitation of the ABC model is that it is built purely on staff time (which accounts for about three quarters of the cost) 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. For a full list of caveats please see the CPS guidance (CPS, 2012):  
[http://www.cps.gov.uk/publications/finance/abc\\_guide.pdf](http://www.cps.gov.uk/publications/finance/abc_guide.pdf).
23. HMCTS court costs used may also 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. We are currently working with HMCTS to update these costs during the passage of the Bill to ensure they are more comprehensive.
24. We have also assumed a 100% legal aid eligibility rate at magistrates' courts as we expect offenders UAL to be able to demonstrate that their official income is below the threshold.
25. Under these assumptions, annual costs were estimated as follows:
- HMCTS costs: £30k
  - CPS costs: £20k
  - Legal Aid Agency costs: £40k

Note: figures may not sum due to rounding.

## Benefits

26. The new offence will provide the courts with the ability to prosecute offenders for 'being unlawfully at large following a recall to custody', as currently there is no separate offence and offenders can only be required to serve the outstanding part of their original sentence in custody. This will allow the courts to have greater sentencing powers to adequately punish offenders UAL. The punishment will be that the offender will not be able to be released by the Parole Board when serving the custodial period of the new sentence – or if the offender's licence was coming to an end and the new sentence is longer than the remainder of the licence. This will ensure that the courts are able to determine the minimum length of time an offender who has been UAL must serve before they can even be considered for re-release.
27. In addition, there may be a deterrent effect which may result in a reduction of offenders remaining UAL.

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<sup>3</sup> The cost quoted assumes that pre-charge advice is provided by the CPS. The cost would be £91 otherwise

**Option 2 – Create an either-way offence with up to 12 months custody and/or a fine for ‘being unlawfully at large following recall to custody (UAL)’ and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’ from 6 months custody and/or a fine to 12 months custody and/or a fine.**

### Costs

#### UAL

28. As with option 1, we assume only a subgroup of those offenders, the most serious cases, who have been UAL for over 28 days would be prosecuted for the new offence, though this will be at the discretion of the CPS. As this is triable either way, we expect the creation of a new offence for offenders UAL to result in an increase in costs to HMCTS, Crown Prosecution Service and the Legal Aid Agency.
29. We also expect additional NOMS costs to be small due to a number of variables which we have taken into consideration in our assumptions and, in relation to the UAL offence, include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case – including sentence length.
30. We have assumed 10% of the UAL offenders prosecuted will be proceeded against in Crown Court<sup>4</sup>, whereas the remainder of offenders will be prosecuted at magistrates’ court and receive a custodial sentence similar in length to that for the Prisoners (Return to Custody) Act 1995 offence (1.8 months). Whilst some of the most serious UAL offenders may face increased punishment the overall impact on NOMS costs will be minimal.

#### ROTL

31. We expect the change to the Prisoners (Return to Custody) Act 1995 offence of ‘failure to return while on temporary licence (ROTL)’ to lead to increased CJS costs as this offence will now be triable either way.
32. The increase in the maximum sentence is likely to lead to additional NOMS costs. However, these additional NOMS costs have not been quantified. Given the fact that we expect a small number of offenders to be given the maximum penalty, we believe that any estimation of the average sentence length returned offenders spend in custody is likely to be misleading.
33. Around 100 offenders were convicted in 2012, and none were given the maximum sentence. Therefore, we have assumed that only 1% of all these offenders will be tried in Crown Court and receive the maximum penalty.

### Total costs

34. Overall, we estimate **additional costs of roughly £200k per annum.**
35. We have used the same Legal Aid eligibility rate as with option 1 and the following unit costs:
  - £420 for legal aid costs per defendant at magistrates’ courts and £4,150 at Crown Court.
  - £160<sup>5</sup> for CPS costs per defendant at magistrates’ courts and £1,800 at Crown Court.
  - £650 for HMCTS costs per defendant at magistrates’ courts and £1,000 at Crown Court for either way offences.
36. Under these assumptions, annual costs were estimated as follows:
  - HMCTS costs: £70k
  - CPS costs: £30k
  - Legal Aid Agency costs: £80k

<sup>4</sup> This is based on data available from ROTL prosecutions which suggests that 1% of all offenders prosecuted are tried in Crown Court. Given that we only expect approximately 12% of offenders who were UAL for over 28 days to be prosecuted, this is roughly equivalent to 10% of this subgroup.

<sup>5</sup> The cost quoted assumes that pre-charge advice is provided by the CPS. The cost would be £93 otherwise.

Note: figures may not sum due to rounding.

### Benefits

37. As with option 1, except for this option having a higher maximum sentence. Therefore, the increase in sentencing powers and potentially in the magnitude of the deterrent effect is greater compared to option 1. In addition, the identified benefits of greater sentencing power and potential deterrent effect will apply to a larger number of offenders as those failing to return to custody whilst on a temporary licence are now included.

**Option 3 - Create an either-way offence with up to 2 years custody and/or a fine for 'being unlawfully at large following recall to custody (UAL)' and increase the maximum sentence for the Prisoners (Return to Custody) Act 1995 offence of 'failure to return while on temporary licence (ROTL)' from 6 months custody and/or a fine to 2 years custody and/or a fine.**

### Total costs

38. As with option 2, in relation to both offences, except for the fact that NOMS costs can potentially be greater in relation to both offences given the higher maximum sentence. However, these costs are expected to be negligible given the fact that only a small number of offenders will be given the maximum penalty.
39. Overall, we estimate **additional CJS costs of around £200k per annum** as with option 2.
40. We also made the same assumptions as with option 2 and used the same unit costs. The following annual costs were therefore estimated:
- NOMS costs: minimal (prison places < 5)
  - HMCTS costs: £70k
  - CPS costs: £30k
  - Legal Aid Agency costs: £80k

Note: figures may not sum due to rounding.

41. Although options 2 and 3 have the same costs this is due to rounding. There is a potential for this option to have higher costs due to the potential increase in NOMS costs because of the higher maximum sentence for both offences, over options 1 and 2. In particular a small number of the most serious UAL offenders may see a significant increase in the time spent in custody. In addition, in comparison to option 1, the increase in court costs as the offence of 'being UAL' can be tried in the Crown Court and the increase in the current maximum sentence for the ROTL offence may also have an impact. However, we estimate this difference to be small as we expect very few offenders to be given the maximum sentence.

### Benefits

42. As with option 2, except for this option having the highest maximum sentence among the proposed options. Therefore, the increase in sentencing powers and potentially in the magnitude of the deterrent effect is likely to be larger.

## Summary and preferred option with description of implementation plan:

43. We propose to legislate to create an either way offence with a maximum sentence of 2 years and/or a fine and increase the maximum sentence for the ROTL offence to 2 years and/or a fine (option 3). As this is the most punitive, it can potentially create a stronger deterrent effect, and provide courts with a higher maximum sentence. Option 3 has greater potential financial implications than the other two options if the higher maximum custodial sentence is imposed for both offences – thus potentially resulting in greater NOMS costs. However we expect the difference in costs to be small because of a number of variables which we have taken into consideration in our assumptions. In relation to the UAL offence, these include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case – including sentence length, and, in relation to the ROTL offence, the fact that a minimal proportion of offenders who fail to return to custody will be affected by the increase in the maximum penalty.

### UAL

44. It is intended that the new offence will apply to those who are already UAL after the revocation of their licence. The new offence will be a continuing offence, it will be committed by not taking steps to surrender to custody and the offender continues to commit this offence all the time whilst UAL. Therefore, on commencement, offenders who are already UAL will be committing this offence by not surrendering to custody. The offence will apply not only to those who fail to surrender after they have been notified of a recall, but also to those who have remained out of touch in breach of their reporting requirements for longer than six months, in order to catch those who absconded and remain UAL before this offence came into force. It is intended that the new offence will be publicised so that offenders, who are already UAL, will be aware that they will be committing a criminal offence if they do not surrender to custody by the time the new offence comes into force.

### ROTL

45. We propose to legislate to raise the maximum custodial sentence available from 6 months to 2 years. As this is the most punitive, it can potentially create a stronger deterrent effect, and provide courts with a higher maximum sentence.
46. Offenders committing this offence of failure to return from ROTL, after the commencement date of the legislation which raises the maximum sentence, will be liable to a maximum sentence of up to 2 years.

## Risks and assumptions:

### UAL

Assumptions	Risks
Total annual costs were estimated under the assumption that only offenders who have been UAL for over 28 days will be prosecuted. Over 200 offenders were UAL or over 28 days before being returned to custody from April to June 2013. Hence, we have assumed an annual volume of around 800/900 offenders. However, we expect only the most serious cases to be prosecuted and sentenced and have estimated CJS costs accordingly.	If a greater number of offenders are prosecuted for the new offence CJS costs will be higher.

<p>The Offender Rehabilitation Bill, currently before Parliament, amends the current arrangements for release and licence so that offenders who have been sentenced for less than 12 months but for more than a day will be released on licence instead of being released unconditionally. We have further assumed that none of these offenders are prosecuted.</p>	<p>There is a risk that post the Offender Rehabilitation Bill, offenders sentenced to under 12 months who go UAL may be prosecuted. This would increase the numbers and associated costs.</p>
<p>Due to uncertainty over the actual sentence length offenders will receive on average, we have assumed that the average custodial sentence length given for the new offence and the proportion of offenders receiving the maximum custodial sentence will be equivalent to that for the Prisoners (Return to Custody) Act 1995 offence.</p>	<p>This will not necessarily be the case as sentencing decisions for offenders UAL are likely to differ from those for offenders who do not return to custody whilst on ROTL, and if the actual length of the average sentence given is longer than the one assumed and/or a greater number of offenders are given the maximum custodial sentence, CJS costs are likely to be higher.</p>
<p>In relation to options 2 and 3, we have assumed that only 10% of the offenders prosecuted will be sent to Crown Court and given the maximum custodial sentence.</p>	<p>If a greater number of offenders are sent to Crown Court, CJS costs will be higher.</p>

## ROTL

Assumptions	Risks
<p>We have assumed total volumes of offenders to be equivalent to the number of convictions that occurred in 2012, and that all proceedings in 2012 resulted in a conviction.</p>	<p>The number of convictions in 2012 is the result of MoJ internal analysis, as no published statistics are available for this specific offence, which is recorded within a wider miscellaneous group of offences. Experimental analysis has been undertaken to attempt to split out convictions specifically for the ROTL offences, using invalidated case information held centrally, and there is a risk this figure is slightly underestimated.</p>
<p>We have assumed that the increase in the maximum penalty will have no effect on charging decision, hence charging volumes remain the same as now.</p>	<p>It is possible that the availability of a higher maximum sentence will have an impact on prosecutor willingness to prosecute the offence, leading to higher prosecution volumes, i.e. the number of proceedings to be in line with 2012 figures. If the actual number of proceedings in the future is higher than the one assumed, this will result in greater CJS costs.</p>
<p>We have assumed that only 1% of offenders will be sent to Crown Court and given the maximum custodial sentence which, given the assumed volume of proceedings, corresponds to a negligible number of offenders.</p>	<p>If a greater number of offenders are sent to Crown Court and/or given the maximum custodial sentence, CJS costs will be higher.</p>