

<b>Title:</b> Criminal Justice Bill: Prisons and Offender Management  <b>IA No:</b> MoJ064/2023  <b>RPC Reference No:</b> N/A  <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> Home Office	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 14/11/2023			
	<b>Stage:</b> Legislation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
	<b>Contact for enquiries:</b> Andrew.Spence1@justice.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not applicable	

Cost of Preferred (or more likely) Option			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year N/A	Business Impact Target Status
-£197m	N/A	N/A	N/A

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

Prisons in England and Wales are operating near total useable capacity. In the long-term demand will be met by new prison builds. However, in the short term, the Government is legislating to enable a future agreement to rent additional prison space in a foreign country. The Government is also enhancing the management of offenders by extending the use of polygraph testing and increasing the use of Multi-agency public protection arrangements (MAPPA). Without intervention the Government is at risk of not being able to provide prison places to all those sentenced and overcrowding within prisons may continue.

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

The primary policy objective is to enable the Government to manage prison capacity and improve public protection of terrorist and sexual offenders released on licence. The secondary policy objectives are to aid resettlement of offenders, reduce reoffending and protect the public, and decrease prison demand. In addition, each measure also has its own specific policy objectives.

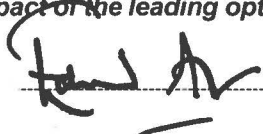
**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- **Option 0:** Do nothing.
- **Option 1:** legislate for;
  - Measure 1A: Extend polygraph testing to some offenders convicted of murder, concurrent offences or terrorism related offences;
  - Measure 1B: Transfer of prisoners to foreign prisons;
  - Measure 1C: Make automatic referrals to Multi-agency public protection arrangements (MAPPA) for those who have been convicted of controlling or coercive behaviour (CCB).

The Government's preferred approach is option 1 as it best meets the policy objectives.

Is this measure likely to impact on international trade and investment? N/A				
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	
<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</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:  Date: 13.xi.2023

# Summary: Analysis & Evidence

# Policy Measure 1A

**Description: Polygraph Testing for some offenders convicted of murder, concurrent offences or terrorism related offences**

## FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 10- years	Net Benefit (Present Value (PV)) (£m)		
			Low: /	High: /	Best Estimate: -£2.3m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	£0.3m	£2.3m

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

Contract costs for training of any new polygraph examiners, equipment, quality control and delivery of polygraph examinations. Fares for people travelling to polygraph appointments. In 2021, a polygraph test was costed at approximately £500 (£550 in 2023/24 prices).

Potential for some people to be recalled to prison through risk related information being disclosed.

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

- Probation officers time for additional admin work;
- Polygraph examiners will be using resources in probation offices e.g., rooms to undertake the tests;
- Increased caseload for polygraph examiners already in post;
- Time taken for people on licence to attend polygraph examination. Polygraph appointments may require a day's leave from paid employment and can involve substantial travel.

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

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

The benefit of polygraph testing is its contribution to strengthening risk management. It's not possible to identify, in monetary terms, the benefit of polygraph testing because we cannot quantify exactly what offending or recall has been prevented.

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

- Harm to the public and recall to prison may be avoided by risk information becoming known early;
- The option of polygraph may lead to more people on indeterminate sentences being released;
- People on licence may be more inclined to comply with their licence conditions;
- (In addition to the benefits above), improve the ability of operational partners to prevent planned terrorist activity.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
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- The number of polygraph examiners needed over the appraisal period, assumed to be 1 per year, with higher costs in the first year to account for training fees.
- Assumed 100 sexual offenders each year within the appraisal period. 20 terrorism connected offenders assumed as a total cohort, only becoming suitable for polygraph when paroled (have costed 100% parole rate).
- Costs have been discounted using HMTs 3.5% discount factor with no optimism bias applied.

## BUSINESS ASSESSMENT (Measure 1A)

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

# Summary: Analysis & Evidence

# Policy Measure 12B

Description: Transfer of prisoners to foreign prisons

## FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 10-years	Net Benefit (Present Value (PV)) (£m)		
			Low: -£163.1m	High: -326.2m	Best Estimate: - £195.7m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	£20.3m	£169.1m
High	N/A	N/A	£40.7m	£338.1m
Best Estimate	N/A	N/A	£24.4m	£202.9m

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

- This analysis considers the variety of costs incurred when relocating prisoners to any partner country. MoJ's low scenario is based on 500 places, the high scenario is on 1,000 places, and MoJ's best (most likely) estimate is 600 places.
- The Present Cost over the 10-year period ranges from £169.1m for a low scenario of 500 prison places to £338.1m for a high scenario of 1,000 prison places; the best estimate scenario is £202.9m for 600 prison places.
- The Best Estimate costs consists for prison rental (87% of cost), £23m for transport (9%) and £8.8m for other costs including British Staff and Offender Management in Custody (4%) (2024/25 real prices, undiscounted).
- Monetised costs are borne by the public sector (HMG) with no direct impact on businesses/other groups.

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

- There will be in-prison healthcare costs incurred for the duration of prisoner rental periods (these have been excluded due to commercial sensitivities).
- Additionally, at the time of publication, the full costs of this policy are unknown as the policy is dependent on any partner country agreement and the costs associated with renting places in that specific country. Therefore, it is possible that other costs will be incurred that are not accounted for in this analysis.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	£0.7m	£6.0m
High	N/A	N/A	£1.4m	£12.0m
Best Estimate	N/A	N/A	£0.9m	£7.2m

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

- HMPPS is expected to benefit from a decrease in prison population demand of between 500 and 1000 places. Only a 'marginal operating cost' saving has been calculated for HMPPS, as the reduction in demand is not expected to lead to a reduction in the size of the prison estate. However, the reduction in demand will help to manage crowding in the existing prison estate.

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

- It is estimated that this measure will provide between 500 and 1,000 additional prison places in one or several partner countries, adding to the supply of prison places, helping HMPPS maintain their commitment to provide sufficient prison places for offenders.
- This measure will alleviate crowding, which should improve living conditions in prison, the stringency of the implemented regime, and the ratio of staff to prisoners.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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- This analysis is illustrative and uses cost estimates which carry a high degree of uncertainty. Therefore, the realised impact of this policy may differ substantially to the analysis outlined here. Due to uncertainty involved, MoJ have presented costs for three potential scenarios (500, 600, and 1,000 rental places per year).
- 20% optimism bias has been added to costs to mitigate some of the uncertainty.
- Costs are dependent on the number of prison places provided, with analysis provided for 500-1000 places.
- It is assumed that the policy will start in April 2026, with an immediate ramp up to the full number of places.
- It is assumed that each prisoner will serve 2 years in foreign rental prison space before being returned to the UK.
- Benefits monetisation assumes that decrease in prison estate demand in England and Wales will reduce overcrowding within the estate.

**BUSINESS ASSESSMENT (Measure 2B): N/A**

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

**Summary: Analysis & Evidence**

**Policy Measure 1C**

Description: Making the MAPPAs referral automatic for those who exhibit controlling or coercive behaviour (CCB).

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 10-years	Net Benefit (Present Value (PV)) (£m)		
			Low: /	High: /	Best Estimate: £0.8m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	£0.01m	£0.1m

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

- Adding CCB to MAPPAs Category 2 offences is estimated to lead to an estimated additional c200 offenders being added to MAPPAs per year.
- Adding CCB to MAPPAs will lead to 0.2% more offenders being managed at Level 1. This has a total estimated annual cost of £100k over a ten-year appraisal period.

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

- There will be costs to services that contribute to the MAPPAs management of individuals due to an increase in the number of MAPPAs managed individuals.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	£0.1m	£0.9m

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

- Average number of reoffences per reoffender is 3.5<sup>1</sup>. Offenders managed under MAPPAs have a lower average number of reoffences per offender of 3.14<sup>2</sup>.
- This would result in an overall reduction in the number of steady state prison places of 58.
- Reduction in required prison places generates a saving of £875k over a ten-year appraisal period.

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

- Reduction in Domestic Abuse related offences which are related to CCB offences.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
<ul style="list-style-type: none"> <li>• Figures are given in the 24/25 price year as this is the expected year of implementation.</li> <li>• Costs have been discounted with a HMT Rate of 3.5%</li> <li>• The average recall to custody rate per year as 0.18% pre-MAPPAs and 1.74% post-MAPPAs.</li> <li>• No Optimism Bias has been applied.</li> </ul>		

**BUSINESS ASSESSMENT (Measure 1C)**

<sup>1</sup> Proven reoffending statistics: January to March 2021 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>3</sup> The National MAPPAs Research- Proven Reoffending Report (4).pdf

OFFICIAL – SENSITIVE

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



Ministry  
of Justice

# **CRIMINAL JUSTICE BILL**

## **Prisons and Offender Management Measures**

# **November 2023**

## Evidence Base

### A. Background

1. This Impact Assessment (IA) explains the policy rationale and objectives which underpin the prisons and management of offenders measures in the Criminal Justice Bill and describes the key stakeholders who would be affected. It then provides an overview of the estimated effect of each of the measures on society, including both the monetised and non-monetised impacts.
2. Prisons in England and Wales are currently operating near total useable operating capacity.
3. The Ministry of Justice and HMPPS is investing £4bn to create 20,000 modern and rehabilitative prison places by the mid-2020s. This will provide a long-term solution to manage prison capacity in England and Wales.
4. Government is focused on ensuring there is sufficient prison capacity to meet demand whilst also ensuring measures are in place to protect the public, reduce reoffending, and deliver justice to victims.
5. Intervention will allow the Ministry of Justice to ensure sufficient prison capacity.
6. This Impact Assessment (IA) describes and assesses three measures that seek to protect the public and protect the prison estate. The combined measures are the Government's preferred option. These are:
  - Measure 1A extend polygraph testing to some offenders convicted of murder, concurrent offences or terrorism related offences;
  - Measure 1B transfer prisoners abroad for the purpose making use of foreign rental space;
  - Measure 1C make the MAPPA referral automatic for those who exhibit CCB.
7. The background to each of these interventions is described in more detail below. The Government's proposed changes to each are described in Section D below.

#### Measure A Polygraph testing for various offences

8. Polygraph tests measure the physiological changes in the body when the individual being tested is asked certain questions. The polygraph instruments measure changes in heart rate, blood pressure, respiratory rate and sweat and the changes to the individual's normal rates can indicate the person is attempting to be deceptive. Polygraph testing was first piloted in two probation regions in England as an additional risk management measure for eligible high-risk people convicted of sexual offences from 2009. An evaluation of this pilot was conducted between April 2010 and December 2011 and testing was subsequently rolled out across the remaining regions in 2014. Sections 28-30 of the Offender Management Act 2007 set out the legislative criteria that someone must meet to be eligible. In 2021, the Counter-Terrorism and Sentencing Act 2021 ("CTSA") extended the condition to specified terrorist offenders, and the polygraph provisions of the Domestic Abuse Act 2021 were brought into force to enable a three-year pilot of polygraph testing with high-risk domestic abuse perpetrators in certain specified police areas.
9. Most recently the Police Crime Sentencing and Courts Act 2022 made changes to legislation to ensure that people could be polygraph tested if they were supervised on licence in England and Wales for a wider range of sexual offences, where they had been convicted as a member of the armed forces, overseas or in another part of the British Isles for equivalent polygraph-eligible offences. Since 2014, the Probation Service have carried out over 7,000 polygraph tests.
10. Government is expanding the eligible cohorts for polygraph testing:
  - **Sexual offences:** Someone needs to be over 18 and on licence for an eligible sexual offence for which they were sentenced to 12 months or more in prison to be able to have the polygraph condition added to their licence. The evaluation into the use of mandatory

polygraph testing in people convicted of sexual offences in 2010/11 concluded that polygraph testing had increased the chances that an individual from this cohort under supervision in the community will reveal information relevant to their management, supervision, treatment, or risk assessment by making clinically significant disclosures. It had also increased the likelihood of preventative actions being taken by offender managers to protect the public from harm. Some individuals subject to polygraph who were interviewed as part of the evaluation claimed that being polygraph tested made them think more about their licence conditions, and nearly half said it made them more inclined to abide by their licence conditions (Gannon et al. 2012).

- **Terrorist connected offences:** The CTSA introduced the imposition of polygraph examinations as a licence condition for individuals who have committed a relevant terrorist offence and who fulfil certain other statutory and policy criteria. ‘Relevant terrorist offence’ includes those who have committed ‘terrorist-connected’ offences. ‘Terrorist connected’ is a statutory sentencing aggravating factor which permits courts to impose a terrorism connection ‘label’ to offenders who committed a non-terrorist offence with a terrorist connection. A two-year review of the use and operation of polygraph within this cohort has been conducted by MoJ researchers, with findings anticipated for publication in autumn 2023.

### **Measure B Transfer of prisoners to foreign prisons**

11. We are taking powers that would enable us to make use of surplus capacity in foreign prisons, subject to international agreement, ensuring we always have sufficient prison places to fulfil the order of the courts in future. Any prison places rented overseas will be of a comparable standard to those in England and Wales with commensurate facilities and opportunities.
12. There is precedent for states to pursue international rental agreements to generate more prison places in response to prison population pressures. There have been agreements between Norway and The Netherlands, and Denmark and Kosovo. The Norway/Netherlands agreement was temporary, and operational from 2015 – 2018, with 650 Norwegian prisoners sent to Dutch prisons.

### **Measure C Adding controlling or coercive behaviour to MAPP**

13. The Criminal Justice Act 2003 (“the 2003 Act”) provides for the establishment of MAPP in England and Wales. MAPP is not a statutory body but is a mechanism through which agencies can better discharge their statutory responsibilities and protect the public in a co-ordinated manner. MAPP allows agencies to assess and manage offenders on a multi-agency basis by working together, sharing information and meeting to ensure that effective plans are put in place to manage these offenders. Those offenders who must be MAPP managed are currently specified in sections 325 and 327 of the 2003 Act.
14. Offenders who fall into the MAPP arrangements are risk assessed and the level of management required under MAPP is set several months out from their release. MAPP management continues for varying periods, depending on the type of offender.
15. In 2021, the Domestic Abuse Act came into force which introduced several different reforms aimed at combatting domestic abuse. As part of that Act, new domestic abuse offences were introduced along with a three-year pilot of polygraph testing on licence for cohorts of domestic abuse offenders. Since then, the department has:
  - Updated statutory guidance to encourage agencies to actively consider managing domestic abuse and stalking perpetrators under MAPP on a discretionary basis.
  - Published a thresholding document for all agencies, highlighting domestic abuse and stalking cases and showing how they can be managed under MAPP.
  - Reviewed and updated HMPPS policies to require practitioners to actively consider MAPP management of perpetrators of domestic abuse and stalking.
16. On 20 February 2023, in a written statement the Home Secretary gave an undertaking to add the offence of Coercive Control to the list of offences to be managed under MAPP.



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

### **Rationale**

17. 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).
18. The rationale for intervention in this IA is to deliver efficiency by introducing measures which manage prison capacity in the short term while avoiding the use of inefficient solutions such as Operation Safeguard, alongside measures which improve the risk management of offenders in the community to protect the public and reduce reoffending.

### **Policy Objectives**

19. The primary policy objective is to enable the Government to manage prison capacity and improve public protection of terrorist and sexual offenders released on licence. In addition, each measure also has its own specific policy objectives. As prisons in England and Wales are operating near total operating capacity, these preferred options will ensure the best use of scarce prison space whilst protecting the public.

### **Measure A Polygraph Testing for Various Offences**

20. This is separated into 2 main sections, Sexual Offences and Terrorist Connected Offences.

#### ***Sexual Offences***

21. The policy objective is to extend polygraph testing to offenders convicted of murder where they are assessed as posing a risk of committing a sexual offence on release, and people convicted of concurrent sexual and non-sexual offences, where the sentence for the sexual offence expires earlier than release for the non-sexual offence to be polygraph tested. This is to ensure that polygraph testing can be used to strengthen public protection and risk management of those on licence who pose the greatest risk of sexual harm and re-offending.

#### ***Terrorism Connected Offences***

22. The terrorist connection label, introduced by the Counter Terrorism Act 2008 (CTA), applied to a specific list of non-terrorist offences (listed in Schedule 2 of the CTA) committed on or after the date of commencement of the CTA on 18 June 2009. The CTSA made amendments with the result that a terrorist connection could be found for any non-terrorist offence committed on or after commencement of the CTSA on 29 June 2021, punishable on indictment with more than two years' imprisonment. This means there are gaps in the polygraph testing regime depending on when an offender committed their offence, regardless of the terrorism risk posed by that offender.
23. The policy objective is to fill these gaps by expanding the scope for polygraph examinations to offenders who have been convicted of an offence that is considered to have had a terrorist connection but was committed before the relevant provisions of the CTA and CTSA came into force. The new power will enable the SoS to extend polygraph licence conditions to offenders where the SoS is satisfied that the offence was, or took place in the course of, an act of terrorism, or was committed for the purposes of terrorism.

### **Measure B Transfer of prisoners to foreign prisons**

24. The policy objective is to give the UK Government the power to transport serving prisoners overseas and then hold them in a prison in a foreign jurisdiction. This will allow the Government to increase the

capacity of the prison estate through international agreement with suitable countries. The prisoners will be held within facilities commensurate to or better than those within the UK and will benefit from the same level of care and opportunities.

### **Measure C Adding controlling or coercive behaviour to MAPPA**

25. The policy objectives associated with adding CCB to MAPPA are to reduce reoffending for domestic abuse-related cases by:

- Placing a duty to cooperate on relevant agencies to ensure the risks associated with that offender are properly targeted and managed.
- Remove discretionary MAPPA management, and make it automatic, where the offender meets the sentencing threshold, putting CCB on par with serious physical violence.

### **C. Affected Stakeholder groups, organisations and sectors**

26. Below are listed the main groups that will be affected by each of the measures described above. For simplicity, we list those affected by each one separately.

#### **Measure A Polygraph testing for various offences**

27. The following groups will be most affected by Measure A:

- Offenders on licence for murder, sexual and relevant terrorist offences who will become eligible for polygraph testing.
- HMPPS who recruit and train polygraph examiners and prison Governors who will be able to include polygraph as a condition on the licences of those eligible offenders they are releasing from prison on standard determinate sentences.
- The Police Service who are responsible for the management of people subject to notification requirements.
- The Parole Board who is responsible for setting licence conditions for people subject to indeterminate sentences or re-release following recall.
- Security community who are responsible for managing the terrorist risk of individuals deemed a 'terrorist risk' that are released on licence.

#### **Measure B Transfer of prisoners to foreign prisons**

28. The following groups will be most affected by Measure B:

- Prisoners who are transferred to prisons located overseas.
- Prisoners' families and dependents. As part of the policy, we will need to ensure prisoners' rights to family life are protected in accordance with Article 8 of the European Convention on Human Rights, including access to visitation on par with what would be provided in HMPPS. It has not been determined who would bear the cost of these visits.
- HMPPS may need to provide some staff, including management team or controllers, to oversee some elements of operational delivery as per an agreed contract between HMG and a partner jurisdiction.
- HM Courts and Tribunal Service (HMCTS) if a prisoner serving a sentence in a foreign jurisdiction is required to appear in court for any reason.
- Criminal defence lawyers if they need to meet with a prisoner serving in the foreign jurisdiction as they will be required to either speak over the phone or travel to the foreign jurisdiction.
- Home Office immigration and asylum case workers if foreign national offenders are transferred to a prison overseas.

## Measure C Adding controlling or coercive behaviour to MAPPA

29. The following groups will be most affected by Measure C:

- Offenders convicted of CCB who meet the sentence threshold and are not currently managed on a discretionary basis under MAPPA;
- HMPPS as this measure will increase the resources needed to manage the way offenders go through the probation service. However, this measure will lead to a lower number of reoffences committed by those with a CCB conviction and therefore reduce the number of people sentenced to prison annually.
- Service providers that contribute to the management of individuals under MAPPA. This may encompass a broad range of organisations across the public sector.

## D. Description of options considered

30. To meet the policy objectives, 2 options are assessed within this IA.

- **Option 0:** Do nothing: Under this option current legislation would continue.
- **Option 1:** Implement the Criminal Justice Bill measures to extend polygraph testing, transfer of prisoners to foreign prisons and add controlling or coercive behaviour to MAPPA.

31. Option 1 is the preferred options as this meets the policy objectives.

### Option 0:

32. Under this option, the problems identified above would continue. Therefore, this option has been rejected as it would not address the policy objectives.

### Option 1:

33. The core legislative measures which are considered within this IA are:

## Measure A Polygraph testing for various offences

34. Under this option polygraph testing would become available to strengthen risk management with:

- People convicted of murder who are assessed as posing a risk of sexual offending upon release.
- People serving concurrent sentences for a sexual and non-sexual offence, where the sentence for the sexual offence terminates before the end of the licence for the non-sexual offence.
- People who were convicted of a non-terrorism offence that they committed before 18 June 2009 (the commencement date of the relevant Terrorism connection provisions in the CTA 2008), and who under current legislation would have been designated a 'terrorist connected' offender, and who are still currently serving their sentence either in custody or on licence in the community.
- People who were convicted of a non-terrorism offence not listed in Schedule 2 to the CTA 2008 that they committed on or after 18 June 2009 but before 29 June 2021 (the commencement date of the relevant terrorism connection provisions in the CTSA 2021), and who under current legislation would have been designated a 'terrorist connected' offender, and who are still currently serving their sentence either in custody or on licence in the community.

## Measure B Transfer of prisoners to foreign prisons

35. Under this option, the UK Government will have the power to transport serving prisoners overseas and hold them in a prison in a foreign jurisdiction. This will allow us to increase the capacity of the prison estate through international agreement with suitable countries.

36. Prisoners will be held within facilities commensurate to or better than those within the UK and will benefit from the same level of care and opportunities.

### **Measure C Adding controlling or coercive behaviour to MAPPA**

37. This option will amend legislation such that those with a CCB conviction who meet the sentence threshold are automatically eligible for management under MAPPA.

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

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

39. 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.

40. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot be monetised sensibly. 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 monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

41. The costs and benefits of each measure (1A, 1B, 1C) under Option 1 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).

42. The annual costs and benefits are presented in steady state throughout this IA. This IA has an appraisal period of 10 years and a base year of 2024/25. Therefore, all cost estimates, unless stated otherwise, are annualised figures in 2023-24 prices rounded to nearest £100k. All volume estimates, unless stated otherwise, are rounded to the nearest 50 places.

43. Unless otherwise stated, no optimism bias has been applied to all impacts (costs and benefits).

44. As is the normal practice in MoJ IAs, the impacts on offenders associated with upholding the sentence of the court are not included in the costs and benefits of each option. For Option 1B (Make Use of Foreign Rental Prison Space) this assumption will be reviewed when more is understood about the implementation of the policy.

### **Measure B: Polygraph testing for various offences**

#### **Costs of Measure A**

##### Monetised Costs

45. There will be contract costs for HMPPS for training of any new polygraph examiners, equipment, quality control and continuing professional development of examiners. We have assumed 1 examiner is needed per year, but this could be subject to change. This examiner is expected to cost £90k in the first year, to account for salary, training, quality control and equipment costs. After such, this examiner is expected to cost £75k annually, with the total cost of examiner fees expected to be £650k over the appraisal period.

46. For the sexual risk cohort, we have assumed a cohort size of 100 offenders per year through the 10-year appraisal period. Each offender is expected to receive 3 polygraph tests annually. With each test costing c.£550, the annual cost of the tests is estimated to be £170k annually and £1.5m by the end of the appraisal period.

47. The cohort of offenders connected to terrorism is a static number. It relates to historic offenders that committed terrorism-linked offences before the Counter Terrorism Act came into force in 2009 or who committed a terrorism-linked offence between 2009 and 2021 which fell outside the specified list in Schedule 2 to the CTA. Each offender is expected to receive 3 polygraph tests annually, but only after they are eligible for parole. With each test costing c.£550, the annual cost of the tests is estimated to be £22k annually and £180k by the end of the appraisal period.

### Non-Monetised Costs

48. We have yet to monetise the costs associated with recalls and fares for people that need to travel to polygraph appointments. Existing examiners already in post are likely to experience an increase in caseload.

49. There are also expected to be additional costs associated with increased administration for probation officers, linked to activity such as preparing offenders for the polygraph test, receiving information from the test and any follow up action required.

50. There will be costs associated with the additional time needed for offenders on licence to attend polygraph examination. Polygraph appointments may require a day's leave from paid employment and can involve substantial travel.

### **Benefits of Measure A**

#### Monetised Benefits

51. At present, we have not conducted an assessment to monetise benefits. The main monetised benefit would be a reduction in costs of crime due to the risk of reoffending being more successfully managed. The evaluation of the mandatory polygraph pilot for people convicted of a sexual offence was not conducted over a long enough period to assess reoffending rates. To date, there have not been enough people convicted of a terrorist related offence subject to polygraph to allow a robust assessment of any change to reoffending rates.

#### Non-Monetised Benefits

##### *The General Public*

52. Severe harm and risk to the public may be avoided by risk information becoming known early to practitioners. This option may lead to more people on indeterminate sentences being released and a reduction in offenders being recalled to custody. People on licence may be more inclined to comply with their licence conditions after receiving regular polygraph testing.

53. In addition to the above, polygraph testing will improve the ability of operational partners to prevent planned terrorist activity. Further IAs will include findings from a report reviewing polygraph utilisation with terrorist offenders over the last two years, anticipated to be published in Autumn 2023.

### **Summary**

54. The total NPSV at the end of the appraisal period for this measure is estimated to be -£2.3m as the Best Estimate.

### **Measure B Transfer of prisoners to foreign prisons**

#### **Method**

55. There is significant uncertainty regarding the number of prisoners who would be impacted by this option as it is reliant upon the specifics of a partner country agreement.

56. At the time of writing no partner country agreement was in place and therefore we have modelled the potential costs of the policy under three scenarios:

- **Low:** This option considers costs for 500 prison places over the period of 10 years, with a policy start date of April 2026. At present, this is the minimum number of places that this policy would consider viable and is therefore used for the Low scenario.
- **Best/Central:** This option considers costs for 600 prison places over the period of 10 years, with a policy start date of April 2026. At present, this is the estimate for the most likely number of prison places that this policy would cover following initial discussions with potential partner countries and therefore is used as the Best Estimate scenario.
- **High:** This option considers costs for 1000 prison places over the period of 10 years, with a policy start date of April 2026. At present, this is the maximum number of places that this policy would consider viable and is therefore used for the High scenario.

## Costs of Measure B

### Monetised Costs

57. The monetised costs considered under Measure B are incurred by His Majesty's Prison and Probation Service, with no costs to businesses or other stakeholders/groups monetised in this Impact Assessment. It should be noted that the full costs of this policy are unknown as the policy is dependent on any partner country agreement and the costs associated with renting places in that specific country. Therefore, it is possible that other costs will be incurred that are not accounted for in this analysis.

58. This appraisal assumes a counterfactual of operating prisons in England and Wales with crowding. However, the 'monetised costs' here represent the full cost associated with renting prison spaces abroad rather than the cost over-and-above holding these prisoners in crowded conditions in HMPPS prison places; this is because the costs that would have otherwise been incurred are accounted for in the 'monetised benefits' section.

59. In the absence of information on foreign prison place rental costs, the analysis uses private sector prison contract costs as a proxy. The cost estimates are based on information provided by MoJ policy and commercial teams and use the current contract rate at Lowdham Grange.

60. Optimism bias of 20% has been added to all monetised costs to account for this measure's uncertainty.

### *Prison Rental*

61. The main cost of this option will be the rental cost of the prison in a foreign jurisdiction. At present, this is estimated at approximately £35k per prison place per year (2024/25 prices, undiscounted average) over the 10-year appraisal period. However, it is highly uncertain as it will be dependent on any specific partner country agreement. The current cost is estimated using the estimated cost of running a privately managed prison in the England and Wales estate. It is assumed that this cost includes provision for the cost of utilities, education and chaplaincy.

62. This leads to estimated average annual costs of c.£18m, c.£21m, and c.£35m for the Best, Low and High scenarios, respectively.

### *Transport*

63. A substantial monetised cost is the transport of offenders to the foreign jurisdiction, via flight. At present, this is estimated at c£3.8k per prison place per year (24/25 prices, undiscounted average) over the appraisal period. It is assumed that each prisoner will serve 2 years in foreign rental space before returning back to the UK. This estimate does not include escort costs or specific flight type assumptions.

*British Staff*

64. A cost will be incurred for the staff required for this measure to be implemented. For the best estimate volume (600 prison places), it is estimated that a controller and management support team will be required, made up of 1 x Band 10 and 2 x Band 9. This would incur an annual cost over the appraisal period of approximately c£350 per prison place (2024/25 prices, undiscounted average) for the best estimate option.

*Offender Management in Custody*

65. It is estimated that for the best estimate volume (600 prison places) an average annual cost over the appraisal period of approximately c£1.1k per prison place (2024/25 prices, undiscounted average) will be incurred for the provision of Offender Management in Custody.

Non-Monetised Costs*In-prison Healthcare*

66. Costs will be incurred for the provision of healthcare for offenders whilst in prison. These have been excluded from this IA due to commercial sensitivities.

*Additional costs*

67. As the specific elements of any partner country agreement are unknown at present, it is possible that additional costs will be incurred that are not outlined within this assessment as part of the agreement.

68. Additional costs incurred may include the environmental cost associated with additional flights to partner countries and both financial and socio-economic cost of families of offenders e.g., in visiting offender abroad. MoJ do not yet have strong enough evidence to accurately assess the likelihood of reoffending serving a sentence abroad, so MoJ will keep the impact of this policy on reoffending rates under review.

69. There may also be some costs to HMCTS (if a prisoner serving a sentence in a foreign jurisdiction is required to appear in court for any reason), criminal defence lawyers (if they need to meet with a prisoner serving in the foreign jurisdiction as they will be required to either speak over the phone or travel to the foreign jurisdiction), and the Home Office immigration and asylum case workers (if foreign national offenders are transferred to a prison overseas).

**Benefits of Measure B**Monetised Benefits*HMPPS*

70. Any impacts from this policy will interact with other system-wide policies affecting prison population and estate capacity. It is very unlikely that the impacts of this option will lead to the closure of cells, wings, or entire prisons, or alter build prison construction plans over the appraisal period. Instead, it will alleviate crowding.

71. As such, when considering the monetisable benefits from reductions of the prison population it is not appropriate to use the full cost per place figure in the 2021/22 HMPPS Annual Report and Accounts of £46,696<sup>1</sup> as a saving to HMPPS; this figure is derived from the overall expenditure recorded on all prisoners divided by the average prison population over the year, and is only suitable if we expect a policy to result in a reduction in fixed overheads.

<sup>1</sup> <https://www.gov.uk/government/publications/prison-performance-data-2021-to-2022>

72. Instead, the appraisal assumes the counterfactual is to hold prisoners in crowded conditions in the HMPPS prison estate and uses a marginal cost per place of £1,800<sup>2</sup> per year to represent the cost avoided for not holding these prisoners in these crowded conditions. This cost assumes each prisoner's addition to the prison estate simply leads to an increase in the prison population with no effect on fixed overheads.

73. This leads to estimated annual costs avoided of £0.7m - £1.4m for the Low and High scenarios, respectively, on average over the 10-year appraisal period.

### Non-Monetised Benefits

#### HMPPS

74. Measure 1B may help make prisons safer places for both prisoners and staff, by delivering a modest reduction in prison population thereby enabling staff to be better placed to work with prisoners on their rehabilitation. By alleviating crowding, this measure should improve factors including:

- Living conditions in prison – as overcrowding in prisons increases, cleanliness and other physical conditions in prison are likely to decline which might have negative effects on prison safety<sup>3</sup>, as well as the mental/physical health of prisoners<sup>4</sup>,
- The stringency of the implemented regime – prisons that are at full/over-capacity often choose to implement a more stringent regime in order to manage the population and therefore risk an increase in violence<sup>5</sup>,
- The ratio of staff to prisoners – having larger numbers of prisoners to supervise per officer is associated with higher rates of both inmate-inmate and inmate-staff assaults<sup>6</sup>. However, it has not been possible to monetise the benefits of this change.

### **Summary**

75. The total NPSV at the end of the appraisal period for this measure is estimated to be -£163.1m for the Low scenario, -£195.7m for the Best scenario and -£326.2m for the High scenario.

### **Measure C Adding controlling or coercive behaviour to MAPPA**

#### **Costs of Measure C**

76. It is estimated that adding controlling or coercive behaviour to MAPPA Category 2 offences will lead to an additional 201 offenders being added to MAPPA per year.

77. Out of 201<sup>7</sup>, it is estimated using MoJ published statistics that 196 will be managed at Level 1. There are currently 88,050 offenders being managed at Level 1. It is expected that adding CCB to MAPPA will lead to 0.2% more offenders being managed at Level 1.

### Monetised Costs

#### HMPPS

<sup>2</sup> Sourced from 2019/20 HMPPS internal analysis (inflated to 2023/24 prices).

<sup>3</sup> Bierie, DM (2012). 'Is Tougher Better? The Impact of Physical Prison Conditions on Inmate Violence', International Journal of Offender Therapy and Comparative Criminology, 56, 338-355

<sup>4</sup> HMPPS Evidence Based Practice Team. (2018). A rehabilitative prison environment. Evidence Summary. Internal document. And HMPPS Evidence Based Practice Team. (2022). Green Prisons. Evidence Summary. Internal HMPPS document; Farrier, A., Baybutt, M., Dooris, M. (2019). Mental Health and Wellbeing Benefits from a Prisons Horticultural Programme, International Journal of Prisoner Health, vol. 15 (1), 91-104).

<sup>5</sup> Understanding prison violence: a rapid evidence assessment Professor James McGuire (2018)

<sup>6</sup> Tartaro and Levy (2007)

<sup>7</sup> Unpublished Ministry of Justice data, for the number of offenders sentenced to 12 months or more for CCB excluding those who received a sentence for a MAPPA offence meeting selected criteria on the same occasion



78. Based on internal HMPPS workload measurement estimates, this increase will require an additional 0.2 FTE probation officer to manage.

79. The average probation officer salary in 24/25 prices is £50,884, an additional 0.2 FTE probation officer costs £11,700. Over the course of a ten-year appraisal period, using average weekly earnings forecast inflation and a 3.5% discount rate this amounts to a total cost of £105k.

### Non-Monetised Costs

80. There are further anticipated non monetised costs associated with organisations that will contribute resource to the management of individuals under MAPPA. Section 325(3) of the 2003 Act requires the Responsible Authority (RA) to co-operate with the list of agencies specified in section 325(6) of the Act. They are known as Duty to Co-operate Agencies (DTC agencies). Not all of the agencies listed will be required to co-operate in every case, as this will depend on the risks posed and the circumstances of the offender and/the victim. Given the low number of cases involved, the national spread and the range of agencies with a legal duty to co-operate it we expect the increase in the resources required to contribute to these additional cases to be low and it is not possible to quantify.

81. Organisations with a duty to co-operate establishing arrangements to assess and manage the risks presented by serious sexual, violent and terrorist offenders are as follows<sup>8</sup>:

- Youth offending teams;
- Department for Work and Pensions;
- Ministry of Defence;
- Education, social services and health<sup>9</sup> functions of local authorities;
- NHS England;
- The Health Authority;
- The Integrated Care Boards or Local Health Board;
- The NHS Trust;
- The local housing authority;
- Private registered providers of social housing and registered social landlords providing or managing residential accommodation in which MAPPA offenders may reside;
- Providers of electronic monitoring services;
- Home Office.

### **Benefits of Measure C**

#### Method

82. It is anticipated that this option will result in a reduction in the number of offenders being committed to custody. Below we set out MoJ's method for determining the likely reduction.

83. Based on Criminal Justice System statistics quarterly from, June 2022<sup>10</sup> the proportion of CCB offenders with a sentence of 12 months to less than 2 years (CCB is 22.4 months, average over last five years) who reoffend is 32.5%. Based on evidence from the National MAPPA Research - Proven Reoffending Report<sup>11</sup>, the reoffending rate for convicted offenders managed under MAPPA is 12.3%.

<sup>8</sup> Multi-agency public protection arrangements (MAPPA): Guidance - GOV.UK (www.gov.uk)

<sup>9</sup> Added by The Health and Social Care Act 2012, Sch.5 s.124.

<sup>10</sup> Criminal Justice System statistics quarterly: June 2022 - GOV.UK (www.gov.uk)

<sup>11</sup> The National MAPPA Research - ARU

84. Data published by the MoJ in proven reoffending statistics: January to March 2021<sup>12</sup> estimates an average number of reoffences per reoffender of 3.5. Offenders managed under MAPPA Category 2 have a lower average number of reoffences per offender of 3.14.
85. Multiplying the number of CCB offences in the year ending June 2022 of 201 by the proportion of offenders that reoffend and the average number of reoffences under the current legislation gives an estimated number of reoffences of 229.
86. Multiplying the number of CCB offences in the year ending June 2022 of 201 by the proportion of offenders managed under MAPPA that reoffend and the average number of reoffences per reoffender managed under MAPPA gives an estimated number of reoffences of 78. Given the legislative amendments in this proposal, we anticipate a reduction in the annual number of reoffences by 151.
87. Given that 96% of proven reoffences result in a charge/summons and 43% of these cases are sentenced to immediate custody<sup>13</sup> this would result in an overall reduction in the number of offenders sentenced for immediate custody by 62 annually.
88. Multiplying the average number of offenders sentenced to immediate custody, by the average custodial sentence length served of 0.93 years gives a steady state reduction in annual prison places required of 58.

### Monetised Benefits

#### *HMPPS*

89. Multiplying the marginal cost of a prison place (£1,800<sup>14</sup>) by the reduction in prison places gives a total saving in year one of £102,000. Over a ten-year appraisal period when factoring in CPI forecast inflation and a discount rate of 3.5% there is an estimated total saving of £900,000.
90. There is, however, a higher recall rate for offenders managed under MAPPA. Data from the National MAPPA Research - Proven Reoffending Report estimates the average recall to custody rate per year as 0.18% pre-MAPPA and 1.74% post-MAPPA.
91. If this recall rate discrepancy is realised when extending MAPPA eligibility to CCB offenders, an increase in recalls may offset some of the reduction in prison places.

#### **Summary**

92. The total NPSV at the end of the appraisal period for this measure is therefore estimated to be £770k.

### **F. Risks and Assumptions**

93. The key assumptions and risks underlying the above impacts are described below.

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<sup>12</sup> Proven reoffending statistics: January to March 2021 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>13</sup> Police recorded crime and outcomes open data tables - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>14</sup> From 2019/20 HMPPS internal analysis (inflated to 2023/24 prices). The marginal cost of a prison place has been used instead of the average cost of a prison place. Since marginal costs account for additional costs incurred by an additional offender to the prison place capacity, they do not include certain fixed costs that do not change with slight changes in prison places, and therefore provide a more accurate scope of cost for this analysis.

**Measure A Polygraph Testing for Various Offences**

Assumptions	Risks / uncertainties
Approximate Costs	We have confidence in the unit costs and reasonable confidence in the cohort sizes (subject to final checks with operational colleagues). Other figures on numbers of annual polygraph tests etc are currently best estimates and would need further analysis to improve confidence.
100 offenders annually for sexual offenders and 20 offenders in total for terrorism related offenders (only costed when they become eligible for parole).	The sexual risk cohort is not static, meaning those convicted of relevant offences in the future will have the polygraph condition available in the future. The terrorism connected cohort is a static number of (around) 20 individuals. This will not increase as it is applicable only to a specific cohort of individuals who committed a terrorism-linked offence before the commencement of the Counter Terrorism Act 2008 (CTA) on 18 June 2009 or who committed a terrorism-linked offence between 2009 and 2021 which fell outside the specified list in Schedule 2 to the CTA.
Examiner costs	Assumed 1 examiner is needed per year, and this has been priced at £90k for the first year and £70k therefore after.

**Measure B Transfer of prisoners to foreign prisons**

Assumptions	Risks / uncertainties
Low, High and Best Estimate volumes are based on current understanding of viable policy options and any potential partner country's capacity. However, the specific number of places is unknown at present.	The costs outlined in this assessment are dependent on the number of places provided, and therefore include inherent uncertainty and are subject to substantial change.
Costs provided in this assessment are based on UK proxy costs.	Costs for actual implementation of this policy will depend upon any partner country agreement and the costs associated with renting places in that specific country. Therefore, the costs presented in this assessment may not accurately reflect the actual costs incurred for this policy.
This assessment assumes an operationalisation date of April 2026, with immediate ramp up to full capacity to volume as set out by the Low/Best/High scenario (500 / 600 / 1,000 places).	<p>As above, this will depend on the agreement with any partner country and therefore the actual operationalisation date of the policy could be before or after the assumed date; this would alter the costs incurred over the 10-year period of this assessment.</p> <p>Additionally, the ramp up of offenders to the foreign jurisdiction is likely to be incurred over several months and dependant on a variety of factors including agreement specifics and transport logistics. Therefore, the immediate ramp up applied in this analysis is unlikely to reflect the actual implementation of the policy.</p>

Each prisoner will serve 2 years in foreign rental prison space, before returning to the UK.	This is highly illustrative as the length of foreign rental sentence is currently unknown.
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**Measure C Adding CCB to MAPPA**

<b>Assumptions</b>	<b>Risks / uncertainties</b>
It is assumed that the reduction in reoffending observed for currently MAPPA managed individuals will hold for newly MAPPA managed individuals with CCB convictions.	The average recall to custody rate per year as 0.18% pre-MAPPA and 1.74% post-MAPPA. If this recall rate discrepancy is realised when extending MAPPA eligibility to CCB offenders, an increase in recalls may offset some of the reduction in prison places.
It is assumed that additional FTE resource will be required to manage the increase in the number of MAPPA managed individuals.	Low risk as the forecasted additional FTE needed annually equates to less than 1.

**Wider Impacts**

**Equalities**

94. An Equalities Impact Assessment has been carried out in addition to this IA. Please see this for further detail.

**Better Regulation**

95. These proposals are not considered to be qualifying regulatory provisions and are out of scope of the Small Business Enterprise and Employment Act 2015.

**Environmental Impact Assessment**

96. We expect there to be no environmental impacts as a result of the options within this IA. The policies meet the environmental principles in accordance with the Environment Act 2021.

**Possible Implications for International Trade**

97. There are no international trade implications from the options considered in this IA.

**H. Monitoring and Evaluation**

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