

<b>Title:</b> Sentencing Bill - Changes on the Presumption of the suspension of short sentences  <b>IA No:</b> MoJ070/2023  <b>RPC Reference No:</b> N/A  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 14/11/2023
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> Andrew.Spence1@justice.gov.uk, Head of Legislation, Ministry of Justice.

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable
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Cost of Preferred (or more likely) Option in 2023/24 prices			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£35.0m	N/A	N/A	N/A

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

The number of adults serving short custodial sentences of 12 months or less as at December 2022 was around 3,700, of which around 2,200 are serving sentences of 6 months or less. Sentences of 12 months or less accounted for 59% of all immediate custodial sentences received in the 12 months to December 2022. Sentences of less than 12 months have a proven reoffending rate of 55% and studies suggest that diverting those individuals to community-based sentences could create a c.4 percentage point reduction in reoffending. While the Government is acting to drive down reoffending rates, to reduce crime and keep communities safe, the evidence suggests that short immediate prison sentences are too often ineffective at reducing reoffending, they have little deterrent effect and are costly.

Community-based sentencing alternatives allow for longer intervention and supervision and have statistically lower reoffending rates. These sentences are less disruptive for individuals, protecting their housing, work and family networks – factors known to reduce reoffending. On this basis, the Government will legislate to introduce a duty on the courts to suspend short sentences of 12 months or less. However, where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The duty to suspend will also not apply where an offender reoffends on license or whilst subject to post-sentence supervision. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence. There is nothing to prevent the courts from suspending the sentence for a period exceeding 12 months, up to the maximum of 2 years.

A suspended sentence is a custodial sentence that can only be imposed on an adult if the court is satisfied that the seriousness of the offence merits a custodial term. The court may also impose conditions and community requirements on the offender which are designed to help address offending behaviour. If the offender breaches the order, by failing to comply with any of the conditions or requirements, or by committing a new offence during the suspension period, the offender will be returned to court. If the breach is proven there is a presumption that the court will activate the custodial sentence.

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

The main policy objective is to reduce the current high levels of reoffending and ensure the effective use of the prison estate. Pursuing this legislative measure, to suspend short sentences, should result in less crime committed, fewer victims and potentially associated economic savings, including savings not just to the adult prison estate itself but down-stream savings from individuals not going on to offend in the future. If the offender fails to comply with their suspended sentence order (SSO) requirements the courts may still impose immediate custody.

**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 to create a duty on the courts to suspend short sentences of 12 months or less. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence. If the offender fails to comply with their SSO requirements immediate custody may still be imposed.

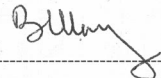
The Government's preferred option is Option 1.

**Will the policy be reviewed? No If applicable, set review date: Not Applicable (N/A)**

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	MicroNo	Small No	Medium No	LargeNo
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A	Non-traded: N/A	

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

Signed by the responsible Minister:

  
 \_\_\_\_\_ Date: 14.11.23

## Summary: Analysis & Evidence

## Policy Option 1

**Description:** Legislate to create a duty on the courts to suspend short sentences of 12 months or less. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence.

### FULL ECONOMIC ASSESSMENT

Price Base Year 23/24	PV Base Year 24/25	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £16.0m	High: £61.7m	Best Estimate: £35.0m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low (corresponds to high scenario)	£2.6m	£3.1m	£30.9m
High (corresponds to low scenario)	£3.6m	£4.2m	£41.8m
Best Estimate	£3.5m	£4.2m	£40.9m

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

Depending on sentencing decisions, there could be an estimated increase in the community-based caseload of between 1,700 and 6,800 in steady state and associated increases in probation starts depending on the number of adults diverted from custody. An estimated transition cost of between £2.6m and £3.6m is expected for 1 year and annual running costs to probation are expected to be between £3.1m to £4.2m. Included within this latter monetised cost are the increased annual running costs to electronic monitoring, increased probation workforce and any extra requirements within the probation order.

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

Other potential costs are: changes to the sentencing framework, e.g. amending sentencing guidelines and training sentencers and new probation staff; an increase in cases before the court where a defendant is unrepresented; the additional provision of community services (e.g., housing and health treatments); and police costs due to people who would otherwise be remanded in custody or in prison following sentence. It is also possible that SSOs may not satisfy victims and therefore take away their feeling that justice has been served, which a sentence of immediate custody may provide. These have not been assessed due to insufficient information.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£1.2m	£6.3m	£57.8m
High	£2.4m	£10.0m	£92.6m
Best Estimate	£1.8m	£8.2m	£75.9m

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

The main impact will be from reductions in reoffending which are expected to lead to benefits in terms of reduced harm to victims and reduced costs in anticipation of and in response to crime. Diverting adults from custody should lead to savings from a lower demand on the prison estate with Option 1 estimated to save between c.200 and c.1,000 prison places a year. The scale of any savings is highly uncertain as it depends on judicial behaviour and whether the reduction in prison demand is sufficient to decommission beds and reduce staff levels or just provide marginal savings per place. An estimated transition benefit of between £1.2m and £2.4m is expected for 1 year and annual savings from reduced reoffending and to the prison estate of £6.3m to £10.0m.

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

Community-based orders are less disruptive to the lives of offenders and this option will allow more adult offenders to maintain important relationships, their livelihood, accommodation and any treatment they may be receiving for mental health or substance misuse.

Key assumptions/sensitivities/risks	Discount rate (%)
	3.5%

This assessment is based on a range of assumptions around sentencing behaviour and scenarios have been used to capture this. There is high uncertainty about both the proportion of adults who would be diverted from custody, as well as the length of any community-based orders given. There is a risk sentencers could decide a custodial sentence is warranted given the circumstances of a case and may sentence those who currently receive a custodial sentence near to the limit of 12 months to a longer custodial sentence (up-tariffing). There is also uncertainty over the number of individuals who will breach their suspended sentence and have the custodial sentence triggered. Different assumptions concerning these factors have been used to construct the scenarios referred to above.

## Evidence Base

### A. Background

#### Problem under consideration

1. The number of adults serving short custodial sentences of less than 12 months as of December 2022 was around 3,700, of which around 2,200 are serving sentences of 6 months or less. Sentences of 12 months or less accounted for 59% of all immediate custodial sentences received in the 12 months to December 2022 which translates into 40,000 adults coming in and out of prison over the course of the year (of these, 32,000 were sentenced to 6 months or less).<sup>1</sup>
2. Currently offenders on short sentences reoffend at a much higher rate than those sentenced to community-based sentences. The proven reoffending rate for adults starting a Community Order (CO) or Suspended Sentence Order (SSO) between January to December 2021 was 30%, compared to 37% for all adults released from custody. Reoffending rates are even higher for short sentences of immediate custody with 55% of those released from custody following a sentence of less than 12 months reoffending within a year.<sup>2</sup>
3. Although these cohorts are inherently different, evidence published in 2015<sup>3</sup> looked at matched groups of offenders based on 130 different variables and found that short sentences of immediate custody were associated with significantly higher reoffending compared to community-based sentences. A follow up report published in 2019<sup>4</sup>, which looked at sentencing occasions in 2016, produced similar results. It showed a reduction of around 4 percentage points in the one-year proven reoffending rate if offenders receiving sentences of less than 12 months with supervision on release were to get a community-based sentence instead.
4. These studies indicate that replacing short sentences with a suspended sentence carried out in the community is likely to lead to reduced reoffending for some offenders. Short sentences create an ongoing issue of a revolving door for offenders entering custody, which in turn creates capacity issues for the entire prison estate. High levels of reoffending also cause more harm to the public, the offender and public property.
5. As a result of the above, the main option evaluated in this Impact Assessment (IA) will create a presumption against sentences of immediate custody of 12 months or less. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The duty to suspend will also not apply where an offender reoffends on license or whilst subject to post-sentence supervision. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence.

<sup>1</sup> Offender Management Statistics quarterly: April to June 2023 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>2</sup> Proven reoffending statistics: October to December 2021 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>3</sup> Mews et al. (2015) The impact of short custodial sentences, community orders and suspended sentence orders on reoffending, Ministry of Justice

<sup>4</sup> Eaton and Mews (2019) The impact of short custodial sentences, community orders and suspended sentence orders on reoffending, Ministry of Justice

6. This IA therefore assesses the potential impacts of making greater use of SSOs to divert adult offenders away from short immediate custodial sentences onto probation supervision in the community.<sup>56</sup>

## B. Policy Rationale and Objectives

### Rationale

7. 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).
8. In this case the principal rationale is efficiency: the current sentencing framework is leading to inefficiencies in terms of substantial economic and societal costs resulting from high levels of reoffending. We know short immediate custodial sentences have higher reoffending rates than community-based sentences when comparing similar offenders. This means reducing the use of short immediate custodial sentences could decrease the volume of reoffending and reduce harm to society.

### Policy Objectives

9. The main policy objective is to reduce the current high levels of reoffending and ensure the effective use of the prison estate. Pursuing this legislative measure should result in less crime committed, fewer victims and potentially associated economic savings, including savings not just to the adult prison estate itself but down-stream savings from individuals not going on to offend in the future.

## C. Affected Stakeholder Groups, Organisations and Sectors

10. The following groups would be most affected by the options assessed in this IA:

- Victims
- Offenders and their families
- Prisons
- Probation Services
- HM Courts & Tribunals Service
- Electronic Monitoring Services
- Other Government Departments (OGDs)
- Sentencers - Judges & Magistrates
- Police Forces
- Local Authorities

## D. Description of options considered.

11. The following options are considered in this IA:

- **Option 0:** This option would maintain the status quo, in which custodial sentences of all lengths would be available for adult sentencing.

- **Option 1:** Legislate to create a duty on the courts to suspend short sentences of 12 months or less. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence.

12. Option 1 is the preferred option as it best meets the policy objectives.

### **Option 0**

13. Under this option custodial sentences of all lengths would be available for adult sentencing. This option would therefore not meet the Government's policy objectives.

### **Option 1**

14. Under Option 1, the Government will introduce a new measure in primary legislation, as part of the Bill. The measure will place a duty on courts to suspend any custodial sentence of 12 months or less.

15. A statutory presumption is intended to highlight to the court that short sentences of immediate custody should only be used as a last resort and that alternative disposals should be used wherever possible. Under a statutory presumption the judiciary will have a discretion to pass a short sentence of immediate custody, but only where the circumstances demonstrably merit such a sentence.

16. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The duty to suspend will also not apply where an offender reoffends on license or whilst subject to post-sentence supervision. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence.

17. This option will aim to ensure a diversion from custody is the primary aim of judges and magistrates when considering sentencing decisions for those who would otherwise receive short-sentences of immediate custody of 12 months or less. This will place a greater emphasis on delivering rehabilitative requirements to offenders which will aid in delivering the MoJ's goal of reducing reoffending. This will apply to all adult offenders. We are carefully considering whether and how some of our wider sentencing changes might apply to children and will provide further details on any decisions in due course. There is already a high bar for a child being sentenced to custody.

## **E. Cost & Benefit Analysis**

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

19. 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.

20. 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.

21. The costs and benefits 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).

22. 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. This is to reflect the earliest timescale at

which the preferred option is expected to be operational given that all options apart from do nothing require changes to primary legislation. All figures are real and have been discounted at 3.5%.

23. All cost estimates, unless stated otherwise, are annualised figures in 2023/24 prices. Where costs are under £1,000m, they are rounded to nearest £100k. Where costs are over £1,000m, they are rounded to the nearest £1m. All volume estimates, unless stated otherwise, are rounded to the nearest 50 places.
24. Unless otherwise stated, a 20% optimism bias has been applied to all the monetised impacts (costs and benefits). This is consistent with other IAs relating to this Bill that use the same unit costs in calculating their NPV.
25. As is normal practice, the impacts on offenders associated with upholding the sentence of the court are not included in the costs and benefits of each option.

## **Methodology**

### Volumes

26. The number of offenders sentenced in 2022 for immediate custodial sentences of 12 months or less, and their average sentence lengths have been used as a baseline.
27. The number of offenders considered to be affected by Option 1 has been determined using:
  - a. MoJ data on the proportion of offences that are related to domestic violence (DV);
  - b. Probation and sentencing data on offending whilst on an SSO or a CO;
  - c. the likely number of offenders who will receive an up-tariffing from sentences of 12 months or less (where the sentencer changes their behaviour to ensure that the offender receives a sentence of immediate custody); and
  - d. the proportion of those who breach and will return to custody.

### Sentencing Behaviour

28. The impact of Option 1 is dependent on the volume of future cases and how the judiciary will sentence them based on this legislation. As sentencer behaviour is impossible to predict exactly, this IA has used an illustrative analysis to show a range of potential outcomes from the intervention.
29. The impacts of Option 1 have therefore been estimated using 3 scenarios. The Central scenario represents MoJ's best estimate of how we expect the prison population to change following implementation. Conversely, the Low scenario represents one where there is the smallest change in the size of the prison population whereas the High scenario represents one where the largest change in the size of the prison population.
30. The details of each scenario are listed below and further detail is provided in Section F:

#### **a. Low Scenario**

*Exclusions:* we assume that 50% of the offenders who receive sentences of 12 months or less will be presumed unsuitable for the presumption. This is based on 1) data indicating an estimated 20% of those on 12 month or less sentences would be excluded due to posing an unacceptable risk of harm to a named individual based on current and historic domestic violence, on 2) an estimated 31% being in breach of a current court order and on 3) 10% being deemed to have exceptional circumstances that would make suspension of the sentence unjust.

*Uptariffing:* the presumption to suspend sentences of 12 months or less may lead to some sentences being increased above 12 months so that the presumption does not apply, known as uptariffing. This scenario also assumes a higher impact of up-tariffing to a longer sentence, where 50% of 9-12 months sentences and all offender receiving sentences of exactly 12 months will be up-tariffed and now receive sentences of over 12 months.

*Breach:* this scenario assumes that 50% of those who would have previously been sentenced to immediate custody but will now receive a suspended sentence will breach this order and have the custodial sentence activated. They would serve the remainder of their sentence in custody

b. **Central Scenario**

*Exclusions:* we assume that 37% of the offenders who receive sentences of 12 months or less will be presumed unsuitable for the presumption. This is based on 1) an estimated 15% being excluded due to posing an unacceptable risk of harm to a named individual based on current and historic domestic violence, on 2) an estimated 24% being in breach of a current court order and on 3) 2% being deemed to have exceptional circumstances that would make suspension of the sentence unjust.

*Uptariffing:* the presumption to suspend sentences of 12 months or less may lead to some sentences being increased above 12 months so that the presumption does not apply, known as uptariffing. This scenario also assumes the same impact of up-tariffing to a longer sentence as the low scenario, where 50% of 9-12 month sentences and all offenders receiving sentences of exactly 12 months will be up-tariffed and now receive sentences of over 12 months.

*Breach:* this scenario assumes that 40% of those who would have previously been sentenced to immediate custody but will now receive a suspended sentence will breach this order and have the custodial sentence activated. They would serve the remainder of their sentence in custody.

c. **High Scenario**

*Exclusions:* we assume that 26% of the offenders who receive sentences of 12 months or less will be presumed unsuitable for the presumption. This is based on 1) data indicating an estimated 10% of those on 12 month or less sentences would be excluded due to posing an unacceptable risk of harm to a named individual based on current domestic violence only, on 2) an estimated 17% being in breach of a current court order and on 3) 1% being deemed to have exceptional circumstances that would make suspension of the sentence unjust.

*Uptariffing:* the presumption to suspend sentences of 12 months or less may lead to some sentences being increased above 12 months so that the presumption does not apply, known as uptariffing. This scenario also assumes a lower impact of up-tariffing to a longer sentence, where 25% of 9-12 month sentences and all offenders receiving sentences of exactly 12 months will be up-tariffed and now receive sentences of over 12 months.

*Breach:* this scenario assumes that 30% of those who would have previously been sentenced to immediate custody but will now receive a suspended sentence will breach this order and have the custodial sentence activated. They would serve the remainder of their sentence in custody.

31. The probation impacts have been calculated by using the decrease in volumes of short sentences of immediate custody in the above scenarios and translating this into the impact on the probation caseload. The increased caseload was calculated by removing the probation volumes of those who would have been on licence post-release for 12 months and replacing it by the flows of offenders receiving SSOs for an average of c.20 months. The impact on reoffending is estimated based on the volume of offenders impacted by Option 1 in each of the above scenarios and while the approach to estimating a specific volume and monetising this benefit is described in the *Monetised Benefits* section below.
32. The main assumptions used in the analysis, along with the associated risks, are discussed in Table 1 in Section F below.

**Option 1: Legislate to create a duty on courts to suspend short sentences of 12 months or less. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate**



**custody. Where there are exceptional circumstances, the courts will impose a sentence of immediate custody.**

**Costs of Option 1**

Monetised costs

*Probation service, Electronic Monitoring Services*

33. This option will increase the number of adults on SSOs. It is assumed that the affected cohorts would spend longer in the probation system so the demand for these services would increase.
34. It is estimated that this option will increase the probation caseload by between 1,700 and 6,800 in steady state (which will be reached by the end of 2024/25) with a central estimate of 3,700. This is due to offenders being diverted from short sentences of immediate custody to SSOs.
35. There will be a decrease in the probation caseload of those on post-release licence from short sentences of immediate custody. The impact on the probation caseload from SSOs is forecasted to be higher than the decrease from those on post-release licence, due to SSOs having a longer supervision period compared to post-release licence (c.20 months and 12 months, respectively).
36. This forecasted increase in probation caseload means that there will be a need to increase the number of Full Time Employees of the probation service within HMPPS. The cost of this has been included within the marginal costs of a person on probation below.
37. The annual marginal costs of a person on probation within a community sentence is c.£3,400 and this cost includes the percentage of offenders who will have an Electronic Monitoring requirement within the SSO.
38. The annual marginal costs of a person on probation on post-release licence is c.£5,300 and this cost includes the percentage of offenders who will have an Electronic Monitoring requirement within post-release licence.
39. Overall, this produces an additional net present cost to the Probation Service of between £30.9m and £41.8m with our central being £40.9m. This represents the total cost to the probation service, including additional workforce, sentence management and extra requirements including electronic monitoring.

Non-monetised costs

*Probation Services*

40. No estimate has been made of the transition or infrastructure changes required to supervise a higher caseload in the probation system, e.g. extra office space, IT hardware and other back office costs.

*Victims*

41. A short custodial sentence can provide relief to a victim of crime. It is possible that the victims of offenders impacted by this option may consider a SSO to be an insufficient punishment for the offence compared to an immediate custodial sentence. Government will legislate to introduce a duty on the courts to suspend short sentences of 12 months or less. However, where there is a significant risk of harm to an individual or where the offender has breached an order of the court, the courts will retain full discretion to impose a sentence of immediate custody. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence.

*Sentencers – Judges & Magistrates*

42. The sentencing guidelines, developed and overseen by the independent Sentencing Council, may need updating to take into account the new sentencing framework and sentencers and probation

staff may need to receive training on this. This has not been included in our cost estimates as there is insufficient information on the required scale and scope of this training.

#### *The Police*

43. Offenders who would otherwise have been in prison serving a custodial sentence may now be managed in the community which could impose impacts on police resources. These costs have not been estimated.

#### *HMCTS*

44. This option may increase the number of hearings for breach of a suspended sentence order. These costs have not been estimated.

#### *Other Government Departments (OGDs)*

45. Some OGDs are the policy owners for specific criminal offences and will likely observe a change in sentencing practice for those offences. If there is an increase in the number of adults managed in the community, it may lead to an increase in demand for services provided by OGDs, including community mental health and prescribing services.

#### *Local Authorities*

46. Local authorities provide and/or fund services that adults in the criminal justice system use, including community drug treatment services and housing. If more adult offenders are diverted into the community, there may be stress placed on their services either because they need to access the service earlier or because they would have received that service in custody. These costs have not been estimated.

### **Benefits of Option 1**

#### Monetised Benefits

##### *Prisons*

47. Option 1 is expected to decrease the adult prison population and reduce the flow of adult offenders into prison, many of whom have multiple and complex needs.

48. Any impacts on the prison population will interact with other system-wide policies affecting prison capacity. It is very unlikely that the impacts of this option – 200-1,000 reduction in prison place demand across our Low/High scenarios – will lead to the closure of cells, wings or entire prisons.

49. As such, when considering the monetizable benefits resulting from any reductions in the prison population it is not appropriate to use the full cost per place figure in the HMPPS Annual Report and Accounts of £46,696 as a saving to HMPPS. This is because this figure is derived from the expenditure recorded directly on all prisoners divided by the average prison population over the year.

50. Instead, we use a marginal cost per place of £1,800, which translates to the additional cost per year of housing an offender where their addition to the prison estate simply leads to an increase in the prison population with no effect on fixed overheads.

51. On the basis of the above, the estimated Net Present Value of the prison saving benefits are £2.8m to £11.2m for our Low and High scenarios, respectively, over the 10 year appraisal period. The central for the NPV of the benefits is £6.1m.

##### *Victims, Wider Society*

52. Shifting individuals from short immediate custodial sentences to community-based sentences could decrease reoffending rates, which over time should also lead to fewer victims of crime

53. Community based sentences have a lower proven reoffending rate than short sentences of immediate custody. Sentences of less than 12 months have a proven reoffending rate of 55.3% and studies suggest that diverting those individuals to community-based sentences could create a c.4 percentage point reduction in reoffending.
54. The reduction in reoffending associated with Option 1 has been calculated by considering this reduction in offences across those who have been deemed eligible for this diversion to an SSO and the number of reoffences per reoffender which is published in the MoJ's proven reoffending statistics.
55. A cost per reoffence at c.£3,900 has been taken from the Home Office's economic and social cost of reoffending publication<sup>7</sup>. As this report used 2017/18 prices, this cost has been inflated to current prices using the GDP deflators.
56. Offenders can commit more than one offence in a year and therefore also be sentenced more than once in that time. This means that there are more sentences of 12 months or less given than there are offenders attending those sentence hearings. To account for this we have applied a negative optimism bias of 20% when calculating the number of offenders who are being sentenced for reoffences.
57. Based on the above, the estimated Net Present Value of the reoffending saving benefits are £54.9m to £81.4m for our Low and High scenarios, respectively, over the 10 year appraisal period. The central for the NPV of the benefits is £69.8m.

#### *Total Monetised Benefits*

58. This leads to estimated Net Present Value of the monetised benefits of Option 1 of £57.8m to £92.6m for our Low and High scenarios, respectively, over the 10 year appraisal period. The central for the NPV of the benefits is £75.9m.

#### Non-monetised Benefits

##### *Offenders and their families*

59. Diverting more adults from short immediate custodial sentences to community-based orders would allow individuals to have their needs addressed in the community, with less disruption to their lives.

For example, a reduction in short sentences of immediate custody could result in more offenders being able to remain in their homes while they serve their sentence in the community. This means they would be better able to maintain their personal relationships and be able to continue any employment. We are not able to monetise this benefit because there is insufficient information to assess the impact this may have.

60. Community based mental health and substance misuse treatment could greatly improve the lives of offenders and the families of offenders. This may also lead to a reduction in reoffending, which has been included within the monetised costs.

#### **Summary**

61. The total NPSV at the end of the 10 year appraisal period for Option 1 is estimated to be £16.0m for the Low scenario, £35.0m for the Best/Central scenario and £61.7m for the High scenario.

## **F. Risks and assumptions**

62. The impacts in this IA have a very high degree of uncertainty because it is heavily based on assumptions where there is limited information, in particular about how sentencing behaviour might

<sup>7</sup> Newton et al. (2019) Economic and social costs of reoffending, Ministry of Justice.

change if the modelled options were implemented. The key assumptions and risks underlying the above impacts are described in Table 1 below.

**Table 1: Main Assumptions and Associated Risks**

Assumptions	Risks / uncertainties
<p><b>Exclusions from the presumption based on posing a risk to a named individual.</b> We estimate the impact of this exclusion using data on domestic violence. This data suggests that in an estimated 10% of cases that result in a 12 month or less sentence, the case is about domestic violence and in a further 10% of cases the offender has been flagged by probation for domestic violence.</p> <p>Low scenario – assumes full 20% of cases excluded.</p> <p>High scenario – assumes only the 10% of cases that are related to current domestic violence are excluded.</p> <p>Central scenario – assumes the midpoint of the two (15%).</p>	<p>The central and high scenarios may overestimate as the exclusion is estimated based on overall DV risk which is not necessarily related to the current offence. It is also possible that the exclusion for risk to a named person also applies in non-DV cases in which case these estimates may underestimate the true exclusion proportion.</p>
<p><b>Exclusions from the presumption based on being in breach of a current court order.</b> Data suggests that an estimated 7% of those on an SSO or CO breach or reoffend whilst on that court order resulting in a custodial sentence of 12 months or less. This leads to an estimated 17% of cases resulting in a sentence of 12 months or less where the offender is on an active SSO or CO at the time.</p> <p>High scenario – assumes that 17% of cases are excluded due to a breach of a current court order.</p> <p>Central scenario – also applies the 7% likelihood to offenders on licence to estimate that 24% of cases are excluded due to a breach of a current court order.</p> <p>Low scenario – doubles the likelihood for offenders on licence to estimate that 31% of cases are excluded due to a breach of a current court order.</p>	<p>We have data on which to base an estimate of the proportion of 12 month or less sentences whilst on an active SSO, CO or licence and our range captures the uncertainty of this. However there may be some cases where an active court order is breached but the individual is not on an SSO, CO or licence. We anticipate that the number of individuals this applies to will be low and if the breach relates to domestic violence it will be picked up in the other exclusion but it is possible that this leads to an underestimate of the proportion excluded.</p>
<p><b>Exclusions from the presumption based on exceptional circumstances relating to the offence or offender which would mean that it would be unjust to suspend the sentence.</b></p> <p>High scenario – assumes that 1% of cases are excluded due to exceptional circumstances.</p> <p>Central scenario – assumes that 2% of cases are excluded due to exceptional circumstances.</p> <p>Low scenario – assumes that 10% of cases are excluded due to exceptional circumstance.</p>	<p>We have no data on which to base this assumption but it is only likely to apply in very rare circumstances. In order to reflect the uncertainty around this assumption the low scenario increases the number of cases excluded as a result to 10%</p>
<p><b>Overall exclusion proportions.</b> These are based on a combination of the three individual assumptions above. The exclusions are not mutually exclusive and so they are applied multiplicatively rather than additively.</p>	<p>This assumes that the exclusions are independent of each other ie. an individual is just as likely to be excluded for one reason regardless of whether they meet the criteria for another exclusion.</p>

<p>High scenario – takes the high scenario assumption for each component to a combined assumption that 26% of offenders will be excluded from the presumption.</p> <p>Central scenario – takes the high scenario assumption for each component to a combined assumption that 37% of offenders will be excluded from the presumption.</p> <p>Low scenario – takes the high scenario assumption for each component to a combined assumption that 50% of offenders will be excluded from the presumption.</p>	
<p><b>Breach rate:</b> assumed to be 30% (high scenario) to 50% (low scenario) and 40% in the central scenario. The current breach rate for suspended sentences is 20% but this presumption will limit judicial discretion and so we would expect a higher rate of breach. 57% of the 6-month or less cohort reoffend and so we assume a 50% breach rate for those impacted by the presumption in the low scenario and 30% in the high with the central scenario taking the midpoint.</p>	<p>This assumption uses current data and estimates a range across the scenarios. The characteristics of prison cohorts remain relatively consistent over time however there is a risk that those impacted by the presumption might breach at a lower or higher rate than the estimated range. The current estimate covers a wide range to attempt to mitigate this risk.</p>
<p><b>Up-tariffing</b> (high – used in the central and low scenarios): we assume that 50% of those previously receiving 9-12m custody receive an uplift and 100% of those previously receiving exactly 12m are uplifted (for triable either way and indictable offences only, summary offences assumed not to be up-tariffed.)</p> <p>Up-tariffing (low – used in the high scenarios): we assume that 25% of those previously receiving 9-12m custody receive an uplift and 100% of those previously receiving exactly 12m are uplifted (for triable either way and indictable offences only, summary offences assumed not to be up-tariffed.)</p>	<p>This assumption attempts to predict how the judiciary will apply the new presumption. As no data for this exists there is a risk of this being higher or lower, therefore there is the potential for impact on the predicted forecast.</p>
<p>We have assumed the average length of suspension for SSOs of 19.7 months will continue to be given to the offenders who are diverted from short sentences of immediate custody.</p>	<p>This is the current average so therefore could be higher, this would impact forecasted probation costs.</p>
<p>The modelling assumes that offenders receive the same suspended sentence as they would have received as a custodial sentence e.g. if they breach they will serve the same custodial sentence length that they would have served if given an immediate custodial sentence.</p>	<p>This is dependent on the nature of the breach, as various degrees of breach may lead to an activation of the custodial sentence in full or in part.</p>
<p>We assume that there are multiple reoffences per sentence, that 55.3% of those serving short sentences of immediate custody reoffend and that this reduces by 4.1% in move to SSO. Based on published stats and MoJ studies.</p>	<p>These figures have remained relatively consistent across data collections though there is potential for these figures to change, changing the impact on re-offending savings.</p>
<p>The cost per reoffence is taken from the MoJ Economic and Social Costs of Reoffending publication. A unit cost of £3,900 per offence is used based on theft which is the most common</p>	<p>The benefits and volumes associated with reduced reoffending are uncertain. A conservative approach is taken to our estimate of volumes of reoffending per person which are based on proven reoffending only without</p>

offence amongst the cohort of 12 months or less.	multipliers to account for any benefits associated with fewer crimes that are not proven.
It is assumed that offenders who would ordinarily receive a suspended sentence, would receive the same so under the new measure (Option 1), as opposed to receiving a sentence of immediate custody.	If this were to happen, there is a risk that this would increase prison places.

## G. Wider impacts

### Equalities

63. We hold the view that the preferred option in this Impact Assessment is unlikely to be directly discriminatory within the meaning of the Equality Act 2010. Please see the separate overarching equalities impact assessment published alongside this IA for further details.

### Impact on small and micro businesses

64. There are not assumed to be any direct costs or benefits to business for these measures.

### Potential trade implications

65. There are not assumed to be any direct costs or benefits to business for any of the measures.

### Better Regulation

66. These activities are out of scope of the Small Business Enterprise and Employment Act 2015 and will not count toward the department's business impact target.

## H. Monitoring and Evaluation

67. The impact of the changes to short custodial sentences and Suspended Sentence Orders due to this measure will be monitored closely by MoJ or associated agencies.