

<b>Title:</b> Statutory Instrument to Amend the Standard Determinate Sentence Automatic Release Point  <b>IA No:</b> MoJ009/2024 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 17/07/2024		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
	<b>Contact for enquiries:</b> Chris Lowe (christopher.lowe2@justice.gov.uk)		
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option (in 2024/25 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
£3,885.2m	N/A	N/A	

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

The growth of the prison population is outstripping prison places available with male prisons routinely operating at over 99% capacity for 18 months. To protect the public, ensure the ongoing running of the justice system and safe operation of prisons, we must ensure there is capacity to accommodate those who are sent to custody by the courts. Most prisoners serving a Standard Determinate Sentence (SDS)<sup>1</sup> are currently automatically released after serving 50% of their sentence to complete the remainder of their sentence on licence in the community. To ensure there is sufficient prison capacity, the government has decided to amend the release point from 50% to 40% for these sentences, subject to eligibility criteria. This change will mean those released earlier from custody spend a longer period of time under supervision in the community. Government intervention is required as changing the automatic release requires amendments to secondary legislation.

The Lord Chancellor announced her intention for this change to be temporary. This change will be reviewed after 18 months to ensure it is still necessary.

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

The policy objective is to ensure there are sufficient prison places to deliver the sentence of the courts by decreasing the proportion of time that some SDS prisoners spend in custody. In addition, it is also expected to reduce crowding and improve prison conditions for both offenders and staff which may improve engagement in rehabilitative activities.

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

- Option 0:** Do nothing. Make no change to current automatic release points.
- Option 1:** Amend the automatic release point for eligible Standard Determinate Sentences to 40%.

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

**Will the policy be reviewed? Yes. If applicable, set review date:** 18 months from implementation.

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
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: Shabana Mahmood Date: 17/07/2024

<sup>1</sup> Eligible sentences include Section 250 sentences and Detention in a Young Offenders Institution (DYOI) sentences that have a 50% release point. Section 250 sentences may be available for a person who is aged under 18 for certain offences, although the majority of section 250 sentences transfer to the adult estate before release. DYOIs are an adult sentence that will only apply to those held in the adult estate.

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Amend the automatic release point for eligible Standard Determinate Sentences to 40%.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
2024/25	2024/25	10 years	<b>Low:</b> £3,420.7m	<b>High:</b> £4,371.7m	<b>Best Estimate:</b> £3,885.2m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
<b>Low</b>	£9.6m	£19.9m	<b>£178.8m</b>
<b>High</b>	£12.9m	£25.3m	<b>£228.6m</b>
<b>Best Estimate</b>	£11.2m	£22.4m	<b>£201.9m</b>

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

Assuming a 10-year operational period (in line with HMT Green Book guidance), Option 1 will result in some offenders being released earlier from custody and spending longer on licence in the community with additional costs to the Probation Service and Electronic Monitoring Service. The annual additional costs are estimated to be £22.4m per annum (2024/25 prices), with a Present Value (PV) of £190.7m. This option will also result in transitional costs in the first year composed of: surge demand for CAS2 accommodation and the wider costs of homelessness, estimated at £4.0m; and costs to HMPPS due to additional resources required to process a larger number of releases, estimated at £7.2m.

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

As offenders will have a longer licence period this will increase demand for services provided to offenders in the community, including substance misuse services, and benefits and financial support (which have not been monetised). There is the potential for an increased recall rate which is not monetised as the extent to which this will happen is unknown. If there is a lower incapacitation effect from shorter spells in custody this may increase the number of crimes committed which could lead to additional costs for the police service, HMPPS as well as those affected by crime.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
<b>Low</b>	£1,948.4m	£193.3m	<b>£3,599.5m</b>
<b>High</b>	£2,490.3m	£247.1m	<b>£4,600.3m</b>
<b>Best Estimate</b>	£2,212.4m	£219.5m	<b>£4,087.1m</b>

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

Option 1 will result in some offenders being released earlier and supervised in the community at a lower cost compared to custody. The Central scenario assumes there will be 5,500 fewer prison places required than would otherwise be needed in steady state (reached in the first year of implementation). Over a 10-year period, the average annual savings for HMPPS due to reduced prison running costs are estimated to be £219.5m per annum (2024/25 prices), with a PV of £1,874.7m. Over the ten-year period, there would be a transitional benefit of reducing the additional number of prison places that need to be constructed, with an estimated benefit of £2,212.4m. The complexity and time required to build new prison places means reducing the scale of the prison build programme required will help ensure greater stability in managing the prison population.

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

Option 1 enables the continued running of the Criminal Justice System, including the police continuing to make arrests and the sentence of the courts being delivered. Without this, there is the significant risk that the lower probability of being arrested would mean an increase in crime due to a reduced deterrent effect. In addition, as a further benefit, reduced overcrowding in prisons will improve conditions, reducing violence in prisons and enabling more rehabilitative activity, which in turn will better prepare prisoners for release and reduce their risk of reoffending. Earlier resettlement could limit the negative effects of custody and have a positive impact for offenders and their families; for example, earlier re-employment will allow offenders to support themselves and their families earlier in their sentence. Any improvement in rehabilitation and subsequent reduction in reoffending would lead to reduced costs to society.

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

Costs and benefits presented here assume the policy operates indefinitely in line with HM Treasury's Green Book to provide a 10-year appraisal period (however the Government has been clear that this measure is temporary and will be reviewed after 18 months). Three scenarios are provided to reflect the uncertainty in these estimates (Central provides the best estimate; Low provides the least impact on the prison population; and High provides the highest impact on the prison population. A full list of assumptions and risks is provided in the Risks and Assumptions section.

# Evidence Base

## A. Background

### Standard Determinate Sentences

1. When imposing a custodial sentence, the courts have a number of options depending on the offence, its seriousness, whether the offender is judged to be 'dangerous', the maximum penalty available and the relevant Sentencing Guidelines. The most serious and dangerous offenders can receive a Life sentence, an Extended Determinate Sentence (EDS), or a Sentence for Offenders of Particular Concern (SOPC) – all of which involve release at the discretion of the Parole Board following a detailed risk assessment. But by far the most common type of custodial sentence is a Standard Determinate Sentence (SDS) which involves automatic release at a given point. As at 31 March 2024, over 41,000 prisoners were serving a SDS, which was over 70% of the sentenced population.<sup>1</sup>
2. In most cases, an SDS has an automatic release point at 50%, with the second half of the sentence served in the community subject to licence conditions, probation supervision and liability to recall to prison for those who fail to comply. However, in the case of very serious sexual and violent offenders, legislative changes made in 2020 and in 2022 require such offenders to serve two-thirds of an SDS sentence before automatic release on licence.
3. Some SDS prisoners may, if eligible, be released before the 50% automatic release point on Home Detention Curfew (HDC) – up to 6 months early at prison governor discretion.

### Problem Under Consideration

4. The growth of the prison population is outstripping the number of prison places available. Over the past 18 months, male prisons have routinely been operating at over 99% capacity. Operating under such pressure is high risk. Without capacity in prisons, there is a growing risk the police will be unable to make arrests or to deliver the sentence of the courts. There is also a risk of prison riots and safety, meaning risk to life and further loss of prison capacity.
5. There is a power in section 267 of the CJA 2003 to make changes, by affirmative Statutory Instrument (SI), to the point at which SDS prisoners must be released. In the context of ongoing acute pressure on prison capacity, an SI will be used to reduce the automatic custodial release point for specified SDS prisoners from the current 50% to 40%, so freeing up prison capacity. The SI defines the cohort of prisoners it applies to (including exclusions) and the proportion of the sentence that must be served in custody before automatic release on licence for the remainder of the sentence. This Impact Assessment (IA) considers the impact of such changes.

---

<sup>1</sup> [Offender management statistics quarterly: October to December 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2023)

## B. Rationale and Policy Objectives

### Rationale

6. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
7. The rationale for intervention in this instance is efficiency and public protection. Because prison capacity pressures remain acute the intention is to ensure that prison spaces are available to deliver the sentence of the courts.

### Policy Objectives

8. The policy objective is to ensure that the Criminal Justice System can continue to function, and that there are sufficient places to deliver the sentence of the courts. The preferred option will reduce demand for prison places by decreasing the amount of time served in custody for eligible SDS. This will also reduce crowding and improve prison conditions for both offenders and staff which may improve engagement in rehabilitative activities and help reduce reoffending.

## C. Affected Stakeholder groups, organisations and sectors

9. The following groups will be most affected by the options in this IA:
  - HM Prison and Probation Services (HMPPS)
  - Electronic Monitoring Services (EMS)
  - Parole Board
  - Community Accommodation Service (CAS-2)
  - Providers of homeless services
  - Providers of health services (including substance misuse treatment)
  - Department for Work and Pension (provision of financial benefits)
  - Police services and the courts (HMCTS)
  - Victims of those released from custody
  - Eligible-offenders and their families
  - Members of the public

## D. Description of options considered

10. To meet the policy objectives, the following options are assessed within this IA.

- **Option 0:** Do nothing: Under this option, current legislation would continue with no change to current automatic release points.

- **Option 1:** Amend the automatic release point for eligible Standard Determinate Sentences to 40%.

11. Option 1 is the Government's preferred option as it is the option that best meets the policy objectives.

### **Option 0**

12. Under this option offenders' release provisions would remain the same. In the short run, this would mean prisons would shortly run out of places and the justice system would no longer be able to function as intended, e.g. the police would be unable to make arrests and the judiciary may not be able to impose immediate custodial sentences. In the medium term, under this option, the MoJ would still need to construct additional prison places to accommodate the increase in the prison population which would occur without the change in automatic release points.

### **Option 1**

13. The automatic release point for most SDS is 50%, meaning after half the sentence is served, prisoners are released into the community to continue their sentence on licence. This option would amend the release point from 50% to 40% for eligible sentences. Offenders released at the 40% point would serve a longer proportion of their sentence in the community on licence, under the same circumstances as if they were serving 50% of their sentence on licence. This means they may be subject to electronic tagging if made a condition of their licence conditions, and they can also be recalled to custody.

14. The policy will be implemented in two initial tranches to balance addressing capacity pressures whilst ensuring the volume of releases is manageable for providers of services for offenders in the community. The first tranche will see prisoners with eligible sentences of less than 5 years released at the 40% point, with the second tranche extending this to sentences of 5 years or more.

15. The below offences are excluded and would retain a 50% release provision.

- a. an offence in the Sexual Offences Act 1956;
- b. an offence in the Sexual Offences Act 2003;
- c. a sexual offence listed in Schedule 15 to the Criminal Justice Act 2003;
- d. a sentence of 4 years or more for a violent offence in Schedule 15 to the Criminal Justice Act 2003;
- e. stalking offences in the Protection from Harassment Act 1997;
- f. controlling and coercive behaviour in an intimate or family relationship in the Serious Crime Act 2015;
- g. non-fatal strangulation and suffocation in the Serious Crime Act 2015;
- h. breach of a restraining order in the Sentencing Act 2020;
- i. breach of a non-molestation order in the Family Law Act 1996;
- j. breach of a Domestic Abuse Protection Order in the Domestic Abuse Act 2021
- k. an offence in the National Security Act 2023;
- l. an offence in the Official Secrets Act 1989;
- m. an offence in the Official Secrets Act 1920;

- n. an offence in the Official Secrets Act 1911;
- o. additional terrorism-related offences and state threat related offences.

16. The change will only apply to eligible SDS sentences that are currently subject to a 50% automatic release point. Indeterminate sentences (including Imprisonment for Public Protection and life sentences), SDS sentences with two-thirds release points and other sentence types will also not be impacted by this change. The policy will be reviewed 18 months after implementation. If the policy were to run indefinitely then it would reduce the number of additional prison places the MoJ needs to accommodate projected increases in the prison population.

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

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

18. 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.

19. 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, 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.

20. 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).

21. 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. The 10-year appraisal period has been used as this is the standard approach set out in the HM Treasury Green Book, however the government’s intent is that this is a temporary policy that will be reviewed after 18 months. All cost estimates, unless stated otherwise, are annualised figures in 2024-25 prices rounded to the nearest £100k. All volume estimates, unless stated otherwise, are rounded to the nearest 100 places.

22. Unless otherwise stated, a 20% optimism bias has been applied to all impacts (applied as an increase to costs and a reduction to benefits).

23. 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.

## **Method**

24. Prison population data from administrative data systems has been used to estimate prison place yields by identifying how many of the current stock of prisoners would be released from eligible sentences on a given day should their sentence release dates be changed to

40%. This is based on one snapshot in time (August 2023) to be representative of the prison population before implementation of the End of Custody Supervised Licence scheme which would be ended on implementation of Option 1 (changing release points of eligible SDS sentences).

25. These estimates carry some uncertainty as data was not easily accessible to quantify accurate release dates where:
- a. Prisoners are serving multiple offences that cover both eligible and ineligible offences as it was unknown how much of their overall sentence length is for the eligible offence.
  - b. Prisoners are serving concurrently for remand or recall alongside a sentence and would not be eligible for release.
26. To control for this uncertainty, the impacts of Option 1 are presented using three scenarios. The Central scenario represents MoJ's best estimate of the impact on the prison population following implementation. The Low scenario represents the scenario with the fewest offenders released, and the High scenario represents the highest number of estimated offender releases.
27. The assumptions underpinning these scenarios are based on further insight gathered from: 1) operational sentencing calculation experts reviewing a sample of detailed offender case files to provide accurate release dates; and 2) operational administrative information from the ECSL scheme on situations where offenders were concurrently serving for recall or remand.
28. The assumptions underpinning each scenario are as follows:
- **Low:** Assumes that all prisoners with a mix of eligible and ineligible sentences get no discount. In addition, assumes 13% of offenders are serving a remand or recall secondary sentence alongside their standard determinate sentence, making them ineligible.
  - **Central/Best:** Assumes that where an offender is serving for a mix of eligible and ineligible sentences or offences that on average they will receive a third of a full discount on their total sentence length (as some receive no discount, and others receive a full or partial discount). In addition, assumes 10% of offenders are serving a remand or recall secondary sentence alongside their standard determinate sentence, making them ineligible.
  - **High:** Assumes that where an offender is serving for a mix of eligible and ineligible sentences or offences that they will receive two-thirds of a full discount on their total sentence length (as some receive no discount, and others receive a full or partial discount). In addition, assumes 7% of offenders are serving a remand or recall secondary sentence alongside their standard determinate sentence, making them ineligible.
29. An additional reduction of 5% has been applied to estimates in all scenarios to account for those serving concurrent sentences. For such offenders, where sentences overlap, the

offender may not be eligible for the full discount on their total sentence length, which would cause an overestimate of prison savings.

30. Modelled estimates also assume future composition and volume of releases (i.e. sentence and offence mix) remain constant; that there is no change in rates of recall nor time spent on recall, and make no adjustment for any potential changes in reoffending behaviour as this is too uncertain to quantify.
31. Option 1 is assumed to be implemented in two tranches. In the first tranche, prisoners with eligible SDS sentences of less than 5 years will be released. The second tranche will extend this to those with eligible sentences of 5 years or more. These two tranches have been designed to balance addressing capacity gaps whilst ensuring the volume of releases is manageable for providers of services for offenders in the community. Following the second tranche of releases, the impact is assumed to reach its 'steady state', wherein the prison saving is maintained while the policy continues operating.
32. Estimated prison place impacts are summarised in Tables 1 and 2. In the Central scenario at steady state, and assuming all necessary preparations and resources are in place, it is estimated that there would be a reduction in demand for prison places of 5,500, compared to future projections for as long as this policy is operational. This would consist of 5,300 male offenders and 250 female offenders (male figures rounded to the nearest 100 places and female figures to the nearest 50 places; numbers do not sum due to rounding). Building additional prison supply takes time to deliver and it would not be feasible to deliver this scale of additional places within time to address projected growth.
33. Under the Low and High scenarios, the reduction in prison place demand is estimated to vary between 4,900 and 6,200 prison places. This would consist of between 4,600 and 5,900 male offenders, and between 250 and 300 female offenders.

**Table 1: Estimated reduction in demand for prison places for Option 1, split by sex**

	Estimated prison place savings*		
	Low	Central	High
All eligible offenders	4,900	5,500	6,200
Male	4,600	5,300	5,900
Female	250	250	300

*\*Impacts are rounded to the nearest 100 for total and male impacts, and 50 places for female impacts (numbers do not sum due to rounding)*

**Table 2: Estimated reduction in demand for prison places for Option 1, split by tranche and sex**

Prison place savings*	Tranche 1**			Tranche 2**		
	Low	Central	High	Low	Central	High
All eligible offenders	3,300	3,800	4,300	1,500	1,700	2,000
Male	3,200	3,600	4,100	1,400	1,700	1,900
Female	200	200	200	100	100	100

*\*Impacts are rounded to the nearest 100 for total and male impacts, and 50 places for female impacts (numbers do not sum due to rounding)*

*\*\*Actual releases may be lower due to some of the yield already being released on ECSL*



34. The scenarios presented do not account for all uncertainty in the impacts of the policy. For further details of all risks and assumptions please refer to the table in Section F.

### **Option 1: Amend the automatic release point for eligible Standard Determinate Sentences to 40%.**

#### **Costs of Option 1**

##### Implementation Costs

35. Implementations costs are expected to take place in 2024/25 and the beginning of 2025/26.

##### *HMPPS*

36. There are expected to be costs involved in implementing this option in the short term to prepare for offender releases such as preparing risk assessments and release plans. We estimate an expected additional surge cost for probation services of £6.2m to £8.3m in 2024-25 for the Low and High scenarios with a Central estimate of £7.2m, and no additional costs are expected after 2024-25.

37. Of this cost, we have assumed that this policy will require enhanced overtime, which accounts for £1.4m to £1.9m of the cost in the Low to High scenarios, respectively, with a Central estimate of £1.6m. Use of enhanced overtime is subject to HMT approval. No additional surge costs are expected after 2024-25.

##### *CAS-2*

38. Community Accommodation Service Tier 2 (CAS-2) provides housing where its first priority is to house those on bail but it can also house people who face a recall to custody due to the loss of suitable accommodation in the community.

39. Under Option 1, it is expected that there may be a short-term rise in demand for CAS-2 due to the initial increase in the licence population. Following this, it is expected that demand would return to current baseline levels and there would be no impact under the steady state.

40. Based on internal estimates of CAS-2 costs, it is estimated there will be an additional operating cost to the MoJ of £1.0m to £1.3m in 2024-25 and 2025-26 for the Low and High scenarios, respectively, with a Central estimate of £1.2m. No additional costs are expected after 2025-26.

##### *Homelessness Services*

41. Community Accommodation Service Tier 3 (CAS-3) provides support to offenders being released from prison or other Community Accommodation Services who are at risk of homelessness.

42. There will be an additional cost associated with the unmet demand due to homelessness costs, for those who are not able to be housed in CAS3 accommodation upon release.

Housing a rough sleeper for one year can generate fiscal and non-fiscal benefits of c.£17k<sup>2</sup> (19/20 prices) in total, depending on support needs. This includes, but is not limited to, the savings for health services, substance treatment and voluntary services.

43. Based on internal estimates of the cost of homelessness due to unmet CAS-3 demand, it is estimated there will be a cost between £2.4m to £3.2m in 2024-25 for the Low and High scenarios, respectively, with a Central estimate of £2.8m. The demand would be short-term due to the initial increase in the licence population and then is expected to return to current baseline levels. No costs for unmet demand are expected after 2024-25.

### Monetised On-going Costs

#### *Probation Services & Electronic Monitoring Service*

44. Of the total cost to HMPPS, and based on internal estimates of probation costs, an expected annual additional cost for probation services is estimated to be between £19.1m to £24.4m for the Low and High scenarios, respectively, on average over the 10 year appraisal period, with a Central estimate of £21.5m<sup>[3]</sup>.

45. Based on internal estimates of electronic monitoring costs, the annual additional cost for electronic monitoring is estimated to be between £0.7m to £0.9m for the Low and High scenarios, respectively, on average over the 10 year appraisal period, with a Central estimate of £0.8m.

46. The total on-going costs to HMPPS are expected to have a Present Value (PV) of -£169.2m to -£215.7m for the Low and High scenarios, respectively, with a Central estimate of -£190.7m

### Non-Monetised Costs

#### *Providers of services to offenders in the community (health, DWP)*

47. As this option will release additional offenders into the community, there will likely be additional demand for services in the community such as substance misuse treatment and financial support and benefits. These have not been monetised.

#### *Members of the public, victims and their families*

48. Whilst offenders are held in prison, they are unable to commit crimes within wider society. As this option will mean offenders serve a reduced proportion of their sentence in custody, the amount of time in which they are unable to commit crimes within wider society is reduced. Therefore, this option could lead to an increase in crimes committed compared to Option 0, which would come with a socio-economic cost. This cost would affect wider society as well as various parts of HMG such as the Police and MoJ. This may however be offset against potential reoffending benefits from improving prison conditions and opportunity to engage in rehabilitative activity.

---

<sup>2</sup> [Rough Sleeping Questionnaire: initial findings \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>3</sup> This is based on a marginal cost of an additional person on the probation licence caseload of c£4,450, which compares to c£3,150 for an additional person on the probation court order caseload (both in 2023-24 prices)

49. It is possible that the general public will feel less content that justice has been seen to be done (reduced retribution). It could be seen that some offenders are not serving their current sentence lengths and therefore there is reduced retribution for the crimes committed. However, evidence on this retribution effect is limited so it is difficult to draw robust conclusions on the size of this impact, or if it is indeed a cost to the general public.

#### *Police services, HMPPS, Parole Board*

50. As this option will release additional offenders into the community, there could be an increased incidence of recall due to offenders breaching their licences. This could lead to more work for the police service (for arrest and return to custody) and HMPPS staff involved in the administration of the recall process, including the Parole Board. The extent to which this would happen is unknown.

### **Benefits of Option 1**

#### Implementation Benefits

##### *HMPPS*

51. Should this policy run indefinitely, it could mean fewer prison places will need to be built in addition to the already committed 20,000 new prison place programme. Based on an internal estimate of the capital building cost for a prison place of £500,000 (2024-25 prices), the MoJ estimates annual costs avoided of £194.8m to £249.0m for the Low and High scenarios, respectively, on average over the 10-year appraisal period, with a Central estimate of £221.2m.

52. The total implementation benefits to HMPPS are expected to have a Present Value (PV) of £1,948.4m to £2,490.3m for the Low and High scenarios, respectively, with a Central estimate of £2,212.4m.

53. As outlined in the risks and assumptions section below, these cost savings assume that without this policy more prisons would need to be built which comes with significant operational constraints and challenges.

54. Building additional prison supply takes time to deliver and is complex requiring steps such as identifying land, completing surveys, securing planning permission, construction and ensuring ancillary support (e.g. kitchens, laundry and healthcare). There can be delays to planning permission outside the department's control, and in addition the construction sector is volatile, with high material costs and a market in-demand, adding further uncertainty to delivery. This means that reducing the scale of any additional prison build programme required brings further benefits to greater stability in managing the prison population.

#### Monetised On-Going Benefits

##### *HMPPS*

55. Based on an internal estimate of the cost of running a prison place at £52,000 (2024-25 prices), the MoJ estimates annual costs avoided of £193.3m to £247.1m for the Low and High scenarios, respectively, on average over the 10 year appraisal period, with a Central estimate of £219.5m.

56. The total on-going benefits to HMPPS are expected to have a Present Value (PV) of £1,651.1m to £2,110.0m for the Low and High scenarios, respectively, with a Central estimate of £1,874.7m

### Non-Monetised On-Going Benefits

#### *Police Services and the Courts*

57. Option 1 will ensure the Police Services and the Courts can continue to function. There will be capacity for arrests to still take place and for the judiciary to impose immediate custodial sentences. Ensuring the police can continue to make arrests is important to preventing crime by deterring would-be criminals. This will benefit future police and court resourcing.

#### *HMPPS*

58. Option 1 may help make prisons safer places<sup>4</sup> for both prisoners and staff, by delivering a reduction in prison population thereby enabling staff to be better placed to work with prisoners on their rehabilitation. By alleviating crowding, this option should improve factors including reduction in the risk of riots, improved living conditions<sup>5</sup> and better ability to operate regimes.<sup>6</sup>

59. These improvements to prison conditions and better staff to prisoner ratios could lead to improved rehabilitation and subsequent reduction in reoffending which would reduce costs to society<sup>7</sup>.

#### *Offenders and their families*

60. Option 1 may help resettlement and rehabilitation of eligible offenders as earlier release into the community will mean they will be able to support themselves and their families earlier in their sentence. This may also lead to reduced reoffending. It has not been possible to monetise the benefits of this change.

61. However, without Option 1 there is a risk prisons would run out of places, stopping the functioning of the whole Criminal Justice System. This would result in the police being unable to make arrests which could encourage more crime and a breakdown of law and order as would-be offenders see a lower chance of getting caught.

---

<sup>4</sup> Understanding prison violence: a rapid evidence assessment Professor James McGuire (2018)

<sup>5</sup> Bieri, 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>6</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>7</sup> Tartaro and Levy (2007)

## Summary

62. The total NPSV at the end of the 10-year appraisal period for Option 1 is estimated to be £3,420.7m for the Low scenario, £3,885.2m for the Best/Central scenario, and £4,371.7m for the High scenario.
63. Whilst costs are presented over a standard 10-year appraisal period, the Government has been clear that this is a temporary policy and will be reviewed after 18 months. If the policy ends after 18 months, then the long-run benefits of reduced prison building costs are unlikely to be realised, and the long-run probation costs would also not be incurred in full. However, under the assumptions in this IA, the transition benefits from Option 1 of a lower prison population will still outweigh the transition costs.

## F. Risks and Assumptions

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

### Option 1

Assumptions	Risks / uncertainties
The prison population upon implementation and in future months is assumed to be the same as at August 2023. This date is used as it is prior to the implementation of the End of Custody Supervised Licence (ECSL) release scheme which will end when SDS40 policy is implemented. Using prison population prior to ECSL was important to avoid interactions and risk of understating impacts.	The future prison population is likely to be different to the current composition which will affect impacts. It is assumed that once the SDS changes have commenced, the use of ECSL will end.
It has been assumed that, where an offender is serving for a mix of eligible and ineligible sentences or offences, that they are ineligible for this policy in our Low scenario, that they receive a third of their full discount on their total sentence length in our Central scenario, and that they receive two-thirds of their full discount on their total sentence length in our High scenario.	This range controls for offenders serving multiple sentences or for multiple offences where their exact discount was unknown. The assumptions used were based on a dip-sampling of such cases, but any deviation from these assumptions when fully implemented will affect impacts.
We have assumed 13%/10%/7% of offenders are serving a remand or recall secondary sentence alongside their SDS in our Low/Central/High scenarios, respectively, making them ineligible.	Data on the number of affected offenders was unavailable and so assumptions used were based on a dip-sampling of cases. If the proportion in the full eligible cohort were different, it would affect impacts.
A reduction of 5% is applied to estimates in all scenarios to account for those serving concurrent sentences.	Where an offender is serving for concurrent eligible sentences, the overlap in sentences may result in the offender not being eligible for the full discount of their total sentence length. By omitting this reduction, impacts would be overestimated.
Offenders with a primary sentence that is an extended sentence may have a secondary sentence that is standard determinate and be eligible for this policy.	The modelling does not currently account for this, and as such it may underestimate impacts because the eligible sentence would receive a discount under the policy.
An adjustment has been made for the interaction with Home Detention Curfew (HDC), both to include the impact from those who were released on HDC as at August 2023 and would otherwise be missed, and to account for those on shorter sentences whose HDC period will be reduced.	The HDC cohort is expected to largely be eligible for SDS and so without making this adjustment we would be missing part of the impact by only including those currently in custody. Those serving shorter sentences will have their HDC period reduced as an offender's maximum HDC period cannot exceed half of their custodial period which will now be 40% of their sentence rather than 50%.
It is assumed there will be no increase in the recall population from additional time spent on licence (neither more recalls, nor longer time spent on recall).	This assumption may mean the impacts from the SDS40 release point may be overestimated.
The modelling does not account for any other future sentencing policy changes.	If other policies affecting the same cohort of offenders are enacted it could affect the expected impacts.

Option 1 is assumed to be implemented in two tranches. The first tranche will be those with eligible sentences of less than 5 years, and the second tranche extends this to those with eligible sentences of 5 years and over.	Delays in implementation will cause an equivalent delay in realising the impact of this option. Changes to implementation options will affect short term impacts.
Capacity limits on CAS-2 do not impact the estimated increase in the licence population.	Because of the sudden increase in the licence caseload, the rate of CAS-2 referral rejection could increase due to lack of administrative capacity. This could have knock-on effects, such as offenders being recalled to prison, which could have a negative effect on the realisable impacts of this option.
The increase in the licence caseload from this policy will lead to avoidance of prison costs.	We have used a marginal cost per prisoner of £52,000 (24/25 prices).
Probation and electronic monitoring cost impacts based on internal economic estimates.	Should the mix of risk levels of offenders change, the hours of supervision required could shift resulting in variation on overall costs.
An optimism bias of 20% is applied to all monetised costs and benefits.	This is standard practice to account for unforeseen costs or over-estimated benefits. Therefore, it may be the case that monetised costs and benefits are lower than forecast.
It is assumed that without any reduction in demand for prison places through this policy, new prison places would be required to account for the demand of these places.	This assumes that there are suitable supply options available which is highly uncertain. Additionally, it assumes that the cost of new places would be incurred earlier than prison places could be constructed but shows the sense of scale for the cost saving.

## G. Wider Impacts

### Equalities

65. None of the measures in this Impact Assessment are likely to be directly discriminatory within the meaning of the Equality Act 2010 as they apply equally to all offenders being sentenced. An Equalities Impact Assessment has been carried out in addition to this IA. Please see the Equalities Statement for further detail.

### Better Regulation

66. These proposals are not considered to be qualifying regulatory provisions and are out of scope of the Better Regulation Framework.

### Environmental Impact Assessment

67. 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

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

## **H. Monitoring and Evaluation**

69. The impact of the changes will be monitored closely by MoJ and HMPPS jointly. Prison population and release figures are monitored and published as part of the Offender Management Statistics. The policy will be reviewed 18 months after implementation.