

<b>Title:</b> Introduction of a new statutory test for release after recall of determinate sentence prisoners  <b>IA No: MoJ007/14</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 05/02/2014				
	<b>Stage:</b> Introduction of legislation				
	<b>Source of intervention:</b> Domestic				
	<b>Type of measure:</b> Primary legislation				
<b>Contact for enquiries:</b> general.queries@justice.gsi.gov.uk					
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Not applicable	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
	£m	£m		

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

Whilst the majority of offenders released on licence are compliant with their conditions there are a number who are not, including some who are recalled on multiple occasions. If an offender who presents a high risk of serious harm breaches their conditions they are given a standard recall which ensures they will not be released again until the Parole Board is satisfied that they are no longer a risk to the public (or at the end of their sentence).

Other offenders normally receive a 28 day fixed recall and are automatically released at the end of this period. The Secretary of State has the discretion, though, to give a standard recall where that is considered necessary in the circumstances. If the offender does not present a risk of serious harm, currently they could be re-released even where there may be concerns about further non-compliance.

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

The intention is to deter offenders from repeatedly breaching their licence conditions, or wilfully refusing to submit to supervision, because if they do they face serving the remainder of their sentence in prison, rather than receiving short fixed term periods of recall.

For those offenders who nevertheless continue to be persistently non-compliant, they can continue to be detained and not released by the Parole Board before the end of their sentence unless the Board is satisfied that they are not highly likely to continue to commit further breaches of their licence.

**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 introduce a new test for the release of recalled determinate sentence prisoners. This would allow, where appropriate, non-compliant offenders to receive a standard recall regardless of risk of serious harm and ensure that they were only released when satisfied as to their future compliance on licence.

We consider that option 1 presents the best value for money solution as it supports the purposes of sentencing and ensures the most effective and appropriate response to offenders who are persistently non-compliant – i.e. standard recall rather than repeated short periods of fixed term recall.

<b>Will the policy be reviewed?</b>		<b>If applicable, set review date:</b> Month/Year			
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No

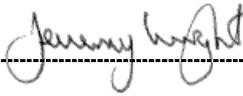
What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions?  
(Million tonnes CO<sub>2</sub> equivalent)

**Traded:**  
N/A

**Non-traded:**  
N/A

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:



Date: 05/02/2014

# Summary: Analysis & Evidence

# Policy Option 1

Description: Legislate to introduce a new test for the release of recalled determinate sentence prisoners.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	£1.5m	£12.5

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

It is estimated that this policy will require up to an additional 50 prison places, at a cost of around £1.5m, per annum.

This is based on the assumption of an additional 75 offenders per annum receiving an additional 234 days each in prison.

There will be no costs to the probation service over and above the do nothing option.

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

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		
High	0		
Best Estimate	0		

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

None.

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

This will increase the incentives on offenders to remain compliant with their licence conditions and will ensure that those who do not are returned to custody and are only released before the end of their sentence at the discretion of the Secretary of State or the Parole Board, who must take into account whether they are highly likely to commit further licence breaches if released.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

It is assumed that breach rates remain the same as for the 6 month period during which data was available. It is also assumed that all offenders given a standard recall under this policy remain in prison for the rest of their sentence (but in practice some will be released earlier by the Secretary of State or the Parole Board). There is a risk that the introduction of licence conditions for offenders receiving less than 12 month sentences (provisions contained in the Offender Rehabilitation Bill) might increase the overall impact of this policy.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: None	Benefits: None	Net: N/A	Yes/No	IN/OUT/Zero net cost

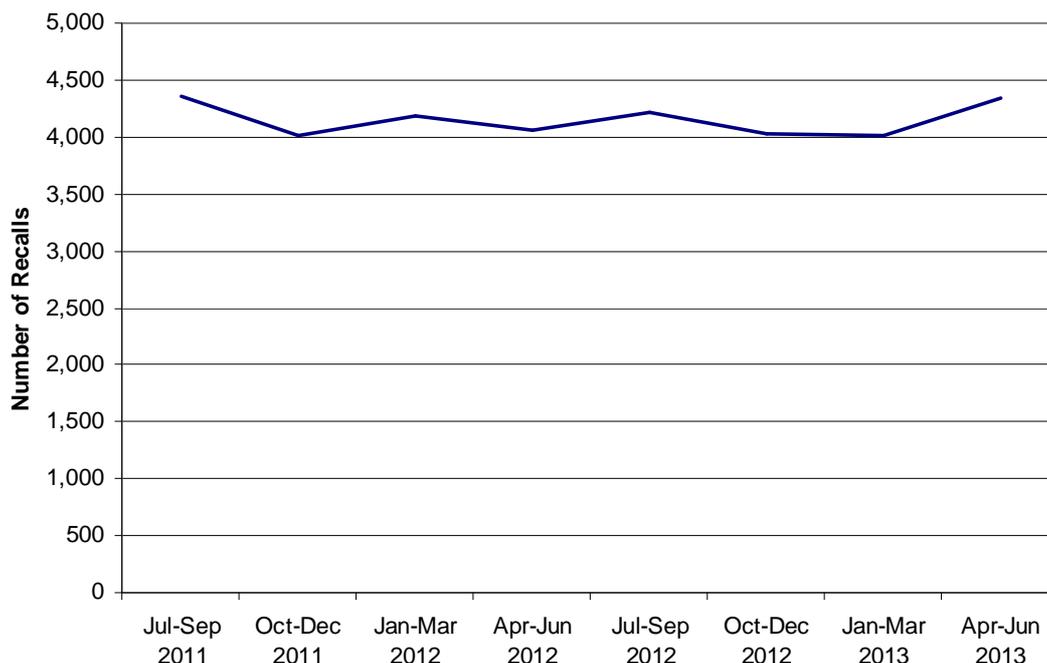
## INTRODUCTION

1. This Impact Assessment (IA) accompanies the Criminal Justice and Courts Bill (“the Bill”). It assesses the proposals to introduce a new test for the further release of recalled determinate sentence prisoners, designed to ensure that offenders who persistently and wilfully refuse to comply with their licence conditions can be recalled to prison for the remainder of their sentence (rather than short fixed periods of recall); and that when considering whether to release them earlier, account must be taken not only of public protection but also whether the offender would be highly likely to commit further licence breaches if released.

## Evidence Base

2. All offenders released from sentences of greater than 12 months are subject to a number of licence conditions which are determined by the Governor of the releasing prison. The exact licence conditions will depend on the individual characteristics of the offender. Any breach of these licence conditions can lead to recall to prison.
3. Based on published statistics, over the period 1999 to June 2013, a total of 630,000 offenders were released from prison on licence supervision. Between April 1999 and June 2013 around 160,000 of those released on licence were recalled to custody for breaching the conditions of their licence, e.g. failing to report to their probation officer<sup>1</sup>.

**Chart 1: Quarterly recalls to custody Jul 2011 – Jun 2013<sup>2</sup>**



4. There are 5 types of recall. These are:
  - *Standard* – liable to be detained until end of sentence unless released earlier by Parole Board or Secretary of State;
  - *Emergency* – same as standard recall but used in cases where there is a need to recall the offender more quickly than usual;
  - *Indeterminate* – recalls of prisoners serving life or IPP sentences;

<sup>1</sup> Offender management statistics quarterly bulletin [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253986/omsq-bulletin-apr-june-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253986/omsq-bulletin-apr-june-2013.pdf)

<sup>2</sup> Offender management statistics quarterly bulletin [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253960/licence-recalls-Q2-2013.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253960/licence-recalls-Q2-2013.xls)

- *Home Detention Curfew (HDC)* – for offenders released on licence before their normal half-way point of release, subject to an electronically monitored curfew;
- *Fixed Term Recall (FTR)* – released automatically, back on licence, after 28 days.

**Table 1: Total number of recalls 29 May - 29 Nov 2013<sup>3</sup>**

Type	Number	Percentage
Standard	3,805	41%
Emergency	837	9%
Indeterminate	211	2%
HDC	481	5%
FTR	3,872	42%
Total	9,206	100%

5. The majority of offenders who receive a FTR have not previously received another FTR during their licence period for their current offence. A small number have received 2 or more previous FTRs.

**Table 2: Frequency of FTRs**

Number of previous FTRs	Number	Percentage
0	2,903	86%
1	411	12%
2	45	1%
3+	3	0%
Total	3,362	100%

6. For those offenders who are repeatedly non-compliant with their licence conditions, offender managers have the discretion to propose standard recalls as an alternative to a FTR. Between 29 May and 29 November 2013, 79 offenders received a standard recall because their behaviour whilst on licence suggested that it was highly unlikely that the offender would comply with supervision or that the offender presented a risk of prolific re-offending. These offenders will also have been assessed as presenting a low or medium risk of serious harm and as such they would otherwise have received a FTR. These offenders would be recalled to end of sentence or until the Parole Board, or the Secretary of State, decides that they can be safely and effectively managed back on licence within the community.

**Table 3: Time to Sentence Expiry Date (SED) for low risk offenders receiving standard recall**

Time to SED	Number of prisoners	Average time to SED	Total days
Up to 3 months	5	61	303
Up to 6 months	24	148	3,554
Up to 1 year	33	250	8,260
Over 1 & Up to 2 years	15	469	7,029
Over 2 years	2	786	1,571
Total	79	262	20,717

<sup>3</sup> Data contained in tables 1-3 is based on internal management information.

# Impact Assessment

## Rationale for intervention

7. Whilst the majority of offenders released on licence are compliant with their conditions there are a number who are not and some are recalled on multiple occasions. Offenders who represent a high risk of serious harm, on breach are given standard recalls which ensure they will not be released again until the Parole Board is satisfied that they are no longer a risk to the public (or at the end of their sentence).
8. Offenders who are not a risk of serious harm normally receive a 28 day fixed recall and are automatically released at the end of this period. The Secretary of State has the discretion, though, to give a standard recall where that is considered necessary in all the circumstances.
9. This provision will therefore not represent in many cases a change to the current position as prolific or persistently non-compliant offenders can already receive 'standard' recalls (i.e. liable to be detained until the end of sentence) rather than fixed term recalls; and they have their cases referred to the Parole Board. So this practice will continue. The problem that these provisions seek to resolve is that the legislation does not explicitly provide that offenders who are persistently non-compliant but who do not present a risk of serious harm to the public should also be considered unsuitable for a fixed term recall (FTR). Only those who are a risk of serious harm to the public are specifically deemed unsuitable for a FTR and must, therefore, be given a standard recall. For offenders who receive a standard recall and have their cases referred to the Board, the current legislation also makes no provision for the test that the Board is to apply when considering their release.
10. For prisoners who receive a standard recall – who are not necessarily serious violent or sexual offenders – there are considerations other than public protection that should be taken into account when considering whether to re-release them back on licence.

## Policy objective

11. The objective is to provide a greater deterrence to offenders who persistently or wilfully refuse to comply with their licence conditions, and thereby encourage greater compliance.
12. For those who nonetheless continue to be persistently or repeatedly non-compliant, the objective is to ensure that they can be held in custody potentially until the end of their sentence if necessary, subject to discretionary release by the Parole Board or Secretary of State.

## Option 0: Do Nothing

13. Under this option, NOMS and Offender Managers would continue to use their discretion to decide on the type of recall that is appropriate in each case. Offender managers would continue to propose standard recall instead of FTR for cases which fall into the same category as the 79 cases identified in table 3 above.
14. This option has been rejected as it would not address the issue of those offenders identified in table 2 who continue to be non-compliant with their licence conditions, as evidenced by the need for multiple recalls. Nor would it ensure that the risk of further non-compliance is taken into account when considering the release of those who are given a standard recall.

## Option 1: Legislate to introduce a new test for the release of recalled determinate sentence prisoners

15. Under this option there would be a specific provision which clearly sets out that an offender who was persistently non compliant with their licence conditions, and continues to be highly unlikely to comply, should be considered unsuitable for a fixed term recall. They could, therefore, be given a standard recall regardless of the risk to the public they pose. Equally it would clarify that, in considering whether to grant release, the Parole Board or the Secretary of State must take into account whether the offender is highly likely to breach their licence in future. Offender managers will, however, retain the discretion to propose FTRs where that is still considered appropriate in all the circumstances.

### **Costs**

16. In order to assess the impact of this proposal we have assumed that all offenders who received more than 1 previous FTR during their current licence period would under the new provision be eligible for a standard recall. Table 2 shows that this would have affected 48 offenders over a 6 month period. We have therefore assumed that it will apply to approximately 100 offenders per year.
17. As there will remain discretion not to impose a standard recall where the circumstances argue against this, we have assumed that this will apply in 25% of cases. Therefore we assume that an additional 75 offenders annually will receive a standard recall instead of a FTR. This may be an over estimate of the numbers likely to be affected as it is possible that more of the 48 identified had special circumstances which made a FTR appropriate.
18. We have further assumed that these offenders will have the same average time to sentence expiry date (SED) as those identified in Table 3, 262 days. Given that they would have received a FTR of 28 days this means that each offender will receive on average an additional 234 days in prison – assuming they are not released before the end of their sentence by the Parole Board or Secretary of State (which a proportion will be). Based on this we calculate this option will require up to approximately 50 additional prison places per annum.
19. Based on a standard cost of £28,000 per prison place this implies that the total cost of this policy will be approximately £1.5m per annum. As the average time to SED is less than 1 year (262 days) it is assumed that the full impact of this policy will be felt in year 1.

### **Benefits**

20. This policy will strengthen the sanctions for offenders who are not compliant with the licence regime, which should in turn increase the deterrents on offenders to remain compliant.
21. It will also ensure that those offenders who have not demonstrated that they are prepared to comply with their licence conditions can be returned to custody until the point where the Parole Board decides that they are now ready for release or until the sentence expires.

### **Summary and implementation Plan**

22. Option 1 is our preferred option as it will make it clear to offenders on licence that repeated or wilful non-compliance will not be tolerated and that they risk longer periods back in prison if they do not adhere to the terms of their licence.

23. The changes will also strengthen the sanctions for those who continue to refuse to comply with their licence conditions and thereby improve public confidence that such offenders will be properly dealt with by potentially having to serve the rest of their sentence in prison. As such we assess that the benefits to this policy will outweigh the costs and as such that this policy represents value for money.
24. In addition, it is important for the legislation to be clear about the types of offender who may not be suitable for a fixed term recall and to provide a clear basis on which their further release from recall is to be considered. This avoids the risk of uncertainty which brings with it the risk of legal challenge – and the associated costs of litigation.
25. Once commenced, new instructions will be issued to probation, prison and NOMS staff about the changes, with guidance on when the different types of recall may be appropriate and what the arrangements and considerations are for further release. The Parole Board will also be invited to amend its guidance to members on the new release test and the basis on which release from recall should be considered.
26. Arrangements will be put in place to monitor recalls following commencement of the changes and the impact it has on the use of standard rather than fixed term recalls for the group of offenders affected. For those receiving standard recalls, the impact on Parole Board release decisions will also be monitored. In turn, the combined impact on the recall prison population will be kept under review.

## Risks and Assumptions

Assumption	Risk
The assessment is based on those currently released on licence, i.e. the over 12 month group. As part of the Transforming Rehabilitation Programme, the Offender Rehabilitation Bill will introduce licence conditions for those receiving sentences of less than 12 months as well.	There is a risk that some of these offenders will also be non-compliant and will receive standard recalls instead of FTRs. This could increase the cost of this policy. However, the licence periods for these offenders will be short (under 6 months), so by the time an offender has shown themselves to be persistently non-compliant and received a standard recall the remaining period to serve is likely to be relatively short. (A standard recall in these cases would be until the end of the under 12 month sentence imposed – it would not continue into the ‘top-up supervision’ period.)
We have assumed that the numbers who breach conditions of licence will remain the same as during the 6 month period for which we have data.	This is a relatively short period to draw inference from and there is a risk that total numbers who receive a standard recall could be greater than we currently anticipate.
We are assuming that all offenders will remain in custody until the end of their sentence.	In certain cases offenders might be released ahead of this point by the Parole Board or Secretary of State. This would reduce the impact of this policy.