

<b>Title:</b> Changes to the framework for the sentencing and release of serious and dangerous sexual and violent offenders. <b>IA No: MoJ006/14</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 03/02/2015				
	<b>Stage:</b> Enactment				
	<b>Source of intervention:</b> Domestic				
	<b>Type of measure:</b> Primary legislation				
<b>Contact for enquiries:</b> <a href="mailto:general.queries@justice.gsi.gov.uk">general.queries@justice.gsi.gov.uk</a>					
<b>Summary: Intervention and Options</b>					<b>RPC Opinion:</b> N/A

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
N/A	N/A	N/A	No	N/A

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

Currently, the majority of prisoners serving a determinate custodial sentence are automatically released on licence at the halfway point of their sentence, regardless of the seriousness of their offending, and without any assessment of their suitability for release. Relevant offenders who have been found by the court to meet the dangerousness threshold set by the Criminal Justice Act 2003 may be given an Extended Determinate Sentence (EDS). Some offenders who currently receive an EDS are automatically released on licence at the two-thirds point of their custodial term, even though they have been found to be dangerous at the time of sentence. Further, there are certain serious terrorism offences and offences that may be charged in serious terrorism cases that are not currently on Schedule 15B and are therefore not subject to the enhanced dangerous offender regime.

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

The policy objectives are to ensure that the most serious offenders, and all dangerous offenders serving an EDS, are subject to early release only at the discretion of the Parole Board. Additionally, the addition of certain terrorism offences, and offences that may be charged in serious terrorism cases, to Schedule 15B of the Criminal Justice Act 2003, and the increase in some maximum penalties to life imprisonment is to reflect the seriousness of modern terrorist offending. Public confidence should be increased if the most serious offenders can only be released early after Parole Board assessment. Offenders should be encouraged to take responsibility for their rehabilitation.

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

Option 0 - Do nothing: continue the current release arrangements for serious violent and sexual offenders.  
Option 1 - Make the following changes to the release arrangements for serious violent and sexual offenders:

1. All offenders given an Extended Determinate Sentence must apply to the Parole Board for release between the two-thirds point and the end of their custodial term .
2. All adult offenders given a custodial sentence for the most serious child sex and terrorism offences must apply to the Parole Board for release between the half-way point and the end of their custodial term.
3. To add certain terrorism offences, and offences that may be charged in serious terrorism cases, to Schedule 15B of the Criminal Justice Act 2003 and to increase the maximum penalty to life imprisonment where this is not already available

The preferred option is Option 1, as this package constitutes proactive steps to increase public confidence on sensitive criminal justice issues; should encourage offenders to take responsibility for their rehabilitation; and will allow for robust sentences to protect the public in a wide range of terrorism cases.

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

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

*Andrew Selous*

Minister:

..... Andrew Selous .....

Date: 02.07.2015 .....

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantified	Not Quantified	Not Quantified
High	Not Quantified	Not Quantified	Not Quantified
Best Estimate	Not Quantified	Not Quantified	Not Quantified

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

As the full impact of these proposals is not realised until 2035 and we do not have reliable cost estimates this far in the future, we have not monetised the costs.

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

We estimate that these proposals will result in an increase in the prison population of around 1,200 places, in the long run, with the full impact reached by around 2035. We estimate there would be an increase of less than 10 prison places in the next Spending Round period (ending March 2016), and that there would be an increase of around 200 prison places by Spring 2020.

We estimate that these proposals would result in an increase of around 1,300 Parole Board hearings per year, in the long run, with the full impact reached by around 2035. We estimate that there would be an increase of less than 30 hearings per year in the next Spending Round period (ending March 2016), and that there would be an increase of around 300 hearings per year by Spring 2020.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantified	Not Quantified	Not Quantified
High	Not Quantified	Not Quantified	Not Quantified
Best Estimate	Not Quantified	Not Quantified	Not Quantified

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

Not quantified.

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

We expect benefits to society, and in particular victims of crime, through the introduction of a new framework for the most serious offending, which ensures that offenders are not released early unless the Parole Board believes it is appropriate to do so, thereby enhancing public confidence in the criminal justice system. There is a potential benefit to offenders in that discretionary release should encourage them to take responsibility for their rehabilitation.

#### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

We have assumed that all offenders will have a Parole Board hearing when they reach the half-way or two-thirds point of their sentence, and subsequent hearings every 15 months, until the end of their sentence. We assume that the Parole Board release 16% of offenders at each Parole Board hearing, which is the 2012/13 release rate for indeterminate sentence for public protection prisoners.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	N/A	N/A

# Evidence Base

## Extended Determinate Sentences

1. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) abolished Sentences of Imprisonment for Public Protection (IPPs) from 3 December 2012 and replaced them with new Extended Determinate Sentences (EDS). Sentencing data<sup>1</sup> shows 728 offenders were sentenced to an EDS between 30<sup>th</sup> June 2013 and up to and including 30<sup>th</sup> June 2014.
2. Data shows that around 10% of these offenders are sentenced to an EDS with automatic release at the two-thirds point of their sentence, and around 90% of these offenders must apply to the Parole Board for release between the two-thirds point and the end of their custodial term.

## Sexual Offences against children

3. In 2013, 293 adult offenders were given immediate custodial sentences for the most serious sex offences against children, as specified in the 2003 Sexual Offences Act. These offences are:
  - Rape of a female child under 13 by a male
  - Rape of a male child under 13 by a male
  - Attempted rape of a female child under 13 by a male
  - Attempted rape of a male child under 13 by a male
  - Assault of a female child under 13 by penetration
  - Assault of a male child under 13 by penetration
4. Of these, 9 were given an IPP or a life sentence and the remaining 284 offenders were given a determinate custodial sentence.
5. Our best current estimate is that the most serious sex offences against children listed above account for 8% of Extended Determinate Sentences. As these offences are on Schedule 15B of the 2003 Criminal Justice Act, an offender sentenced to an EDS for these offences must apply to the Parole Board for release between the two-thirds point and the end of their custodial term.
6. Before the implementation of the 2003 Sexual Offences Act in May 2005, these sexual offences against children under 13 were charged as sexual offences against children aged under 16, under the 1956 Sexual Offences Act. There were 305 offenders given determinate custodial sentences in 2013 for rape or attempted rape of a child aged under 16 but we do not know how many (if any) of these victims were aged under 13.

## Terrorism Offences

7. Figure 1 shows the list of terrorism act offences, for which, under the new proposals, the offender must apply to the Parole Board for release between the half-way point and the end of their custodial term. This table also indicates which of these offences are not currently included in Schedule 15B to the Criminal Justice Act, and therefore should be added, and which offences should have the maximum sentence increased to life imprisonment. The Home Office publish data on the number of offenders convicted under these terrorism acts, which is also shown<sup>2</sup>.

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<sup>1</sup> Sentencing Tables in Criminal Justice Statistics Quarterly: June 2014

<sup>2</sup> Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 30 June 2014, Great Britain,

**Figure 1 – Terrorism act offences**

Offence	Act	To be added to Schedule 15B	Maximum sentence to be raised to life	Number of offenders convicted, year ending June 2013	Number of offenders convicted, year ending June 2014
Directing a terrorist organisation	Terrorism Act 2000			0	0
Possession of an article for terrorist purposes	Terrorism Act 2000			0	0
Inciting terrorism overseas	Terrorism Act 2000			0	1
Use etc of nuclear weapons	Anti-terrorism, Crime & Security Act 2001			0	0
Assisting or inducing weapons-related acts overseas	Anti-terrorism, Crime & Security Act 2001			0	0
Use of noxious substance or thing to cause harm or intimidate	Anti-terrorism, Crime & Security Act 2001			0	0
Preparation of terrorist acts	Terrorism Act 2006			11	18
Making or possession of radioactive device or material	Terrorism Act 2006			0	0
Use of radioactive device or material for terrorist purposes	Terrorism Act 2006			0	0
Terrorist threats relating to radioactive devices	Terrorism Act 2006			0	0
Weapons training	Terrorism Act 2000	Yes	Yes	0	0
Training for terrorism	Terrorism Act 2006	Yes	Yes	0	3

Source – Home Office<sup>2</sup>

8. Figure 1 shows that 22 offenders were convicted for these terrorism act offences in the year ending June 2014, and 11 offenders were convicted in the year ending June 2013.
9. Figure 2 shows the list of non-terrorism act offences, for which, under the new proposals, (if given a custodial sentence other than a life sentence or an Extended Determinate Sentence) the offender must apply to the Parole Board for release between the half-way point and the end of their custodial term, if the offence has a terrorist connection. This table also indicates which of these offences are not currently included in Schedule 15B of the Criminal Justice Act 2003<sup>3</sup>, and therefore have been added, and which offences have the maximum sentence increased to life imprisonment.

<sup>3</sup> To ensure consistency with Schedule 15B we are also adding the following offences to Schedule 15 to the Criminal Justice Act 2003: the common law offence of incitement to murder, an offence under Part 2 of the Serious Crime Act 2007 committed in relation to murder, making or possession of explosive under suspicious circumstances (s.4 Explosive Substances Act 1883).

**Figure 2 – terrorism related offences,**

Offence	Act	To be added to Schedule 15B	Max sentence to be raised to life
Attempted murder, soliciting murder, conspiracy to murder, incitement to murder and an offence under Part 2 of the Serious Crime Act 2007 committed in relation to murder	Common Law / Criminal Law Act 1977 / Offences against the Person Act 1861 / Serious Crime Act 2007		
Causing an explosion likely to endanger life or property	Explosive Substances Act 1883	Yes	
Intent to cause an explosion likely to endanger life or property	Explosive Substances Act 1883	Yes	
Possession of explosives	Explosive Substances Act 1883	Yes	Yes
Causing bodily injury by gunpowder or other explosive substance	Offences against the Person Act 1861	Yes	
Causing gunpowder or other explosive substance to explode with intent	Offences against the Person Act 1861	Yes	

Source – Home Office<sup>2</sup>

10. While the Home Office data does not show the number of offenders convicted for these individual offences, it does show that there were 3 offenders convicted in the year ending June 2014 for non-terrorism act offences, where the offence was terrorism related, and 5 convicted in the year ending June 2013.<sup>2</sup>.

## Impact Assessment

### Problem under consideration

11. Currently the majority of prisoners serving a determinate custodial sentence are automatically released on licence at the halfway point of their sentence, regardless of the seriousness of their offending, and without any assessment of their suitability for release. Relevant offenders who have been found by the court to meet the dangerousness threshold set by the Criminal Justice Act 2003 are given an Extended Determinate Sentence (EDS). Some offenders who receive an EDS currently are automatically released on licence at the two-thirds point of their custodial term, although they have been found to be dangerous at the time of sentence. Further, there are certain potentially serious terrorism offences and offences that may be charged in serious terrorism cases that are not currently on Schedule 15B of the Criminal Justice Act 2003, and are therefore not subject to the enhanced dangerous offender regime.

### Rationale for intervention

12. We expect benefits to society, and in particular victims of crime, through the extension of discretionary release, and changes to sentences for terrorism offences. Public confidence should be increased if the most serious offenders can only be released early after Parole Board assessment. Offenders should be encouraged to take responsibility for their rehabilitation.

### Policy objective

13. The policy objectives are to ensure that the most serious offenders, and all dangerous offenders serving an EDS, are subject to discretionary early release. Additionally, the addition of terrorism offences to Schedule 15B of the Criminal Justice Act 2003 and the increase in some maximum penalties to life imprisonment will reflect the seriousness of modern terrorist offending.

### Option 0 - Do nothing

14. Do nothing: continue the current release and sentencing arrangements for serious violent and sexual offenders.

### Option 1 - legislative changes

15. Make the following changes to the release arrangements for serious violent and sexual offenders:

- I. All offenders given an Extended Determinate Sentence must apply to the Parole Board for release between the two-thirds point and the end of their custodial term
  - II. All adult offenders given a custodial sentence for the most serious child sex and terrorism offences must apply to the Parole Board for release between the half-way point and the end of their custodial term
  - III. To add certain terrorism offences, and offences that may be charged in serious terrorism cases, to Schedule 15B of the Criminal Justice Act 2003 and to increase the maximum penalty to life imprisonment where this is not already available.
16. The preferred option is Option 1, as this package constitutes proactive steps to increase public confidence on sensitive criminal justice issues; should encourage offenders to take responsibility for their rehabilitation; and will allow for robust sentences to protect the public in a wide range of terrorism cases. In view of the sensitivity of public confidence in respect of high end offending, and the policy imperative to protect the public from dangerous offenders, the benefits are considered to outweigh the costs.

**All offenders given Extended Determinate Sentences must apply to the Parole Board for early release**

**Aims and outcomes for the policy**

17. To ensure that offenders serving an EDS must apply to the Parole Board for early release.

**Costs**

18. Data shows that 80 offenders were given an EDS with automatic release between 30<sup>th</sup> June 2013 and up to and including 30<sup>th</sup> June 2014.
19. We have estimated the impact on the prison population and Parole Board workload by using our best estimates of the number of offenders that will be affected by this proposal, and their current sentence lengths, and using assumptions about when these offenders are likely to have a Parole Board hearing, and the likelihood of being released at each of these hearings.
20. We estimate that if all these offenders were to apply to the Parole Board for release, there would be an increase in the prison population of around 100 places in the long run, with the full impact reached by 2025. We estimate that there would be an increase of less than 10 prison places in the next Spending Round period (ending March 2016).
21. There would also be an increase in the number of Parole Board hearings. We estimate that there would be an increase of around 100 Parole Board hearings per year in the long run, with the full impact reached by 2025. We estimate that there would be an increase of less than 10 hearings per year in the next Spending Round period (ending March 2016).
22. As the full impact of this proposal is not realised until 2025, and we do not have reliable cost estimates this far in the future, we have not monetised the costs.

**Benefits**

23. We expect benefits to society, and in particular victims of crime, through the extension of discretionary release to all prisoners who have been found by the courts to be dangerous. This proposal ensures that these offenders are not released early unless the Parole Board believes it is appropriate to do so, thereby enhancing public confidence in the criminal justice system. There is a potential benefit to offenders in that discretionary release should encourage them to take responsibility for their rehabilitation.
24. There could be a saving to probation if these offenders receive a shorter time supervised in the community, as they spend longer in custody. We have not quantified these savings as they are very uncertain. We have also not quantified any changes to the time spent on recall by these offenders.

## Risks and assumptions

Assumption	Risk
We have estimated the number of offenders that will be affected by this proposal based on recent data on sentencing for these offenders. Our estimate on the number of offenders who will receive an EDS with automatic release assumes that judges continue to give this sentence at the same rate as they did between the end of June 2013 and June 2014.	There is a risk that judges could give more or fewer of these sentences, leading to an inaccurate estimation of the impact of this proposal.
We have assumed that all offenders will have a Parole Board hearing when they reach the two-thirds point of their custodial term, and subsequent hearings every 15 months, until the end of their custodial term. We assume that the Parole Board release 16% of offenders at each Parole Board hearing, which is the 2012/13 release rate for indeterminate sentenced for public protection prisoners <sup>4</sup> .	There is a risk that offenders could have Parole Board hearings at longer or shorter intervals, and that the Parole Board release more or fewer offenders. This could lead to an inaccurate estimation of the impact of this proposal.
We have assumed that the offenders will receive the same sentence length under the new provisions.	Judges could decide to give longer or shorter sentence lengths under the new provisions, leading to an inaccurate estimation of the impact of this proposal.

### **All offenders given a custodial sentence for the most serious child sex and terrorism offences must apply to the Parole Board for early release**

#### **Aims and outcomes for the policy**

25. To ensure that the most serious child sex and terrorism offenders must apply to the Parole Board for early release.

#### **Costs**

26. We estimate that up to around 350 of the most serious child sex and terrorism offenders will now need to apply for the Parole Board for early release. We have estimated this by considering:

- The 284 offenders who were given a determinate sentence for a serious child sex offence in 2013.
- As explained in paragraph 6, we do not know the number of offenders who were sentenced in 2013 for rape of a child aged under 16 under the 1956 sexual offences act, when the victim was aged under 13. We therefore assume that around 50 additional offenders would need to apply to the Parole Board for early release after conviction under the 1956 act.
- As explained in paragraphs 8 and 10, there are up to around 30 offenders per year, who are convicted for the most serious terrorism offences.

27. We have estimated the impact on the prison population and Parole Board workload by using our best estimates of the number of offenders that will be affected by this proposal, and their current sentence lengths, and using assumptions about when these offenders are likely to have a Parole Board hearing, and the likelihood of being released at each of these hearings.

28. We estimate that if all these offenders were to apply to the Parole Board for early release, there would be an increase in the prison population of around 1,100 places in the long run, with the full impact reached by around 2035. We estimate that there would be an increase of less than 10 prison places

<sup>4</sup> The Parole Board Annual Report and Accounts for 2012/13, July 2013.

in the next Spending Round period (ending March 2016), and that there would be an increase of around 200 prison places by Spring 2020.

29. There would also be an increase in the number of Parole Board hearings. We estimate that there would be an increase of around 1,100 Parole Board hearings per year in the long run, with the full impact reached by around 2035. We estimate that there would be an increase of less than 20 hearings per year in the next Spending Round period (ending March 2016), and that there would be an increase of around 300 hearings per year by Spring 2020.
30. There will be a licence period at the end of the custodial term, of 1 year, and there could be a cost or saving to NOMS if the time these offenders spend supervised in the community after release changes. We have not quantified these costs or savings as they are very uncertain. We have also not quantified any changes to the time spent on recall by these offenders.
31. As the full impact of this proposal is not realised until 2035, and we do not have reliable cost estimates this far in the future, we have not monetised the costs.

### Benefits

32. We expect benefits to society, and in particular victims of crime, through the introduction of a new framework for the most serious offending, which ensures that offenders are not released early unless the Parole Board believes it is appropriate to do so, thereby enhancing public confidence in the criminal justice system. There is a potential benefit to offenders in that discretionary release should encourage them to take responsibility for their rehabilitation.

### Risks and assumptions

Assumption	Risk
<p>We have estimated the number of offenders that will be affected by this proposal based on recent data on sentencing for these offenders. There were 9 offenders sentenced to IPPs or a life sentence for these offences in 2013/14, and around 60 offenders sentenced to an EDS for these offences in 2013/14. We have assumed that these EDS offenders will not be affected by this proposal, as they will already apply to the Parole Board for release.</p>	<p>There is a risk that we have over or under estimated the number of offenders affected by this proposal, leading to an inaccurate estimation of the impact of this proposal.</p>
<p>We have assumed that all offenders will have a Parole Board hearing when they reach the two-thirds point of their custodial term, and subsequent hearings every 15 months, until the end of their custodial term. We assume that the Parole Board release 16% of offenders at each Parole Board hearing, which is the 2012/13 release rate for indeterminate sentenced for public protection prisoners<sup>5</sup>.</p>	<p>There is a risk that offenders could have Parole Board hearings at longer or shorter intervals, and that the Parole Board release more or fewer offenders. This could lead to an inaccurate estimation of the impact of this proposal.</p>
<p>We have assumed that the offenders will receive the same sentence length under the new provisions.</p>	<p>Judges could decide to give longer or shorter sentence lengths under the new provisions, leading to an inaccurate estimation of the impact of this proposal.</p>

<sup>5</sup> The Parole Board Annual Report and Accounts for 2012/13, July 2013.

**To add certain terrorism offences and offences that may be charged in serious terrorism cases to Schedule 15B of the Criminal Justice Act 2003 and to increase the maximum penalty to life imprisonment where this is not already available**

**Aims and outcomes for the policy**

33. The aim of the policy is to ensure that robust sentences can be imposed where necessary on the most serious and dangerous terrorist offenders.

**Costs**

34. As explained in paragraphs 8 and 10, we estimate that these changes will apply to less than 30 offenders per year.

35. We estimate that this proposal will have a minimal impact on the prison population, Parole Board and providers of supervision in the community. This is because this proposal will affect a small volume of offenders who have committed very serious offences, and are already likely to currently receive very long custodial sentences.

**Benefits**

36. This proposal will have benefits for society in that it should enhance public confidence by marking the seriousness of modern terrorist offending. In public protection terms it will ensure that robust sentences can be imposed where necessary on the most serious and dangerous terrorist offenders.

**Risks and assumptions**

Assumption	Risk
Data recording practices for low volume offences means that we do not have the total volumes of offenders sentenced for these offences, and therefore we have estimated the number of offenders affected.	There is a risk that we have over or under estimated the number of offenders affected by this proposal, leading to an inaccurate estimation of the impact of this proposal.

**Summary**

37. Figure 3 shows a summary of the impacts of the proposals on the prison population and the Parole Board.

**Figure 3 - Summary of the impacts of the proposals.**

Proposal	Additional Prison Places (long run)	Additional Parole Board hearings (long run)
All offenders given an Extended Determinate Sentence must apply to the Parole Board for early release	100	100
All adult offenders given a custodial sentence for the most serious child sex and terrorism offences must apply to the Parole Board for early release	1,100	1,100
To add certain terrorism offences and offences that may be charged in serious terrorism cases to Schedule 15B to the Criminal Justice Act 2003 and to increase the maximum penalty to life imprisonment	Minimal	Minimal
<b>Total</b>	<b>1,200</b>	<b>1,300<sup>6</sup></b>

<sup>6</sup> Totals may not sum due to rounding.

