

Title: The Police, Crime, Sentencing and Courts Bill 2021: Overarching Criminal Law IA IA No: MoJ077/2020 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: Home Office	Impact Assessment (IA)		
	Date: 24/02/21		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Katie.Dougal@justice.gov.uk			
Summary: Intervention and Options			RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2020/21 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£9.7m	N/A	N/A	Not a regulatory provision

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

Current legislation states that where the value of criminal damage to statues and memorials is £5,000 or less, the maximum penalty is a custodial sentence of three months, which does not reflect the severity or harm caused by the crime. Likewise, the current positions of trust offences legislation does not protect many 16-18 year olds from exploitation by adults undertaking certain activities in sports or religious settings, and does not allow the government to update the list of roles included as positions of trust efficiently. The Police, Crime, Sentencing and Courts Bill (PCSC Bill) will ensure that, in each case, the relevant legislation is amended to provide greater public protection and confidence. Government action is necessary in each of these instances as making the required amendments requires primary legislation.

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

On criminal damage to memorials, the policy objective is to amend the Magistrates' Courts Act 1980 to remove consideration of the monetary value with respect to criminal damage to memorials which would otherwise limit the court's sentencing powers. In cases where damage to a memorial is worth £5,000 or less, these would no longer be treated as summary only offences but would be triable either way – and be subject to the maximum penalty for criminal damage of 10 years. The positions of trust policy objective is to extend protection by creating further positions of trust within the Sexual Offences Act 2003 within sports and religious settings to ensure adults undertaking certain activities can be prosecuted if they engage in sexual activity with 16-18 year olds.

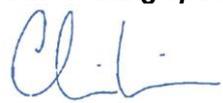
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Option 0 – Do nothing. Retain the current sentencing framework and provisions available for sentencing offenders. Maintain the current practice for adding substances to the drug testing framework.
- Option 1 – Implement the PCSC Bill measures for criminal law, namely:
 - Amend the Magistrates' Courts Act 1980 to remove consideration of monetary value with respect to criminal damage to memorials, effectively increasing the maximum sentence to 10 years where damage is less than £5000.
 - Expand positions of trust offences to cover sports and religious settings and allow the flexibility to add new positions of trust offences in future.

The government's preferred approach is option 1 as this best meets the policy objectives.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: No set date.				
Does implementation go beyond minimum EU requirements?		N/A		
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
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A

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

Signed by the responsible Minister:  Date: 08/03/2021

Summary: Analysis & Evidence

Policy Option 1

Description: Implement the PCSC Bill measures for criminal law

FULL ECONOMIC ASSESSMENT

Price Base Year 2020/21	PV Base Year 2020/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£3.9m	High: -£24.1m	Best Estimate: -£9.7m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.9m	£0.3m	£3.9m
High	£6.7m	£2.4m	£24.1m
Best Estimate	£2.5m	£1.0m	£9.7m

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

The main monetised costs of Option 1 are as follows:

- Prison Services: an estimated 10 prison places resulting in an estimated £0.6m running costs per annum; estimated one-off construction costs of £2.5m.
- Probation Services: estimated £0.2m per annum from higher number of community and suspended sentences.
- HM Courts and Tribunals Service (HMCTS): £0.1m per annum from higher caseloads and higher proportion of trials in Crown Courts.
- Legal Aid Agency: £0.09m per annum from higher caseloads and higher proportion of trials in Crown Courts.

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

- There may be some one-off transitional costs for HMCTS and the Sentencing Council associated with the preparation of new guidance and training material.
- The Crown Prosecution Service may experience higher costs due to more cases being tried in Crown Court.
- The Home Office may have increased costs from monitoring more offenders on the Sex Offenders Register.

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

Description and scale of key monetised benefits by 'main affected groups' N/A

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

Not all non-monetised benefits could be listed here due to space. The key non-monetised benefits are:

- Increased confidence in the criminal justice system and protection for the public, people charged with maintaining memorials, young people protected from sexual exploitation and the judiciary.
- There may be greater public protection from a potential decrease in offences due to the deterrent effect of these measures, although evidence on the existence and size of deterrent effects is weak.

Key assumptions/sensitivities/risks	Discount rate (%)	3.50%
--	--------------------------	-------

- The implementation date is assumed to be Autumn 2021 (this may change but will not materially impact the analysis).
- Future estimated volumes are based on MoJ published statistics and the proxy offence of racially or religiously aggravated criminal damage.
- Any additional prison places will incur an annual running cost of £44,640 in England and Wales (excluding optimism bias).
- Any additional prison capacity required will be met through construction in Year 1 after policy implementation at a cost of £250,000 per place.
- Optimism bias of 20% has been applied to all costs (unless otherwise stated).

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: None			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

A. Background

1. The Police, Crime, Sentencing and Courts (PCSC) Bill includes reforms to ensure the sentence fits the crime thereby providing greater public protection and confidence. This overarching criminal law Impact Assessment (OIA) assesses two measures where the government believes that existing legislation is not sufficient to meet the needs of the public and the criminal justice system (CJS). These are:
 - The current legislation on the desecration of statues and war memorials means sentencing for damage worth £5,000 and under does not reflect the severity of the crime or the harm caused.
 - The current list of positions of trust offences fail to offer sufficient protection to 16 and 17 year olds from sexual exploitation where such abuse occurs within a sports or religious setting.
2. The rest of this OIA explains the problems at hand, the underpinning rationale for government intervention and the associated policy objectives and describes the key stakeholders who would be affected. It then provides an overview of the impact of each of the proposals on society, including both the monetised and non-monetised impacts.

Criminal Damage to Memorials

3. Demonstrations in the summer of 2020 saw protesters targeting statues, including war memorials and other commemorations of cultural significance, which sparked significant interest in the topic in the House of Commons. It has long been considered that the law is not sufficiently robust in this area as, while incidences of damage to and desecration of statues and war memorials are typically of low monetary value, they very often carry a high sentimental and emotional impact. Historical data from the War Memorials Trust indicate that from 2007 to 2017 an average of 12 war memorials per year were vandalised.¹
4. On 23 June 2020, MPs asked the government to support a new Desecration of War Memorials Bill intended to introduce a new and specific offence where a person destroys, damages or otherwise desecrates a war memorial. The MPs expressed concern that when damage to a war memorial amounts to £5,000 or less, the maximum sentence is three months imprisonment, which they say does not reflect the severity of the crime or the distress caused to the public at large.
5. As a result, the government has decided to introduce, as part of the PCSC Bill, an amendment to the Magistrates' Courts Act 1980 to remove consideration of monetary value with respect to criminal damage to statues and war memorials which would otherwise, in some cases, determine whether the case is heard in the magistrates or crown court and so limit the court's sentencing powers. As the law currently stands, courts are obliged to try such cases summarily where the value of damage was assessed as being worth less than £5,000, which meant the full range of sentencing powers were not available.
6. These changes will ensure that where statues and war memorials are damaged or desecrated the courts are able to sentence appropriately at every level for this offending.

Positions of Trust

7. Where a person older than 18 is in a specified position of trust, it is an offence for them to have any sexual activity with a person under the age of 18, even if the relationship is consensual. Current positions of trust offences include teachers, care workers, youth justice workers, among others, and cover settings such as schools, hospitals and residential care homes. The law intends to protect 16-18 year olds from exploitation by an adult in a position to do so.
8. The definition of a position of trust is drawn in a measured way to recognise the need to balance the legal right to consent to sexual activity by those aged 16 and over with the desire to protect young people from manipulation, exploitation and abuse.

¹ Source: War Memorials Trust, 2017: War Memorials Trust reports on cases of theft and vandalism to war memorials (<http://www.warmemorials.org/uploads/publications/623.pdf>)

9. The Ministry of Justice, working closely with other government departments, carried out a review of current positions of trust offences in ss16-19 of the Sexual Offences Act 2003, launched in spring 2019, to ensure that existing offences are being used appropriately and effectively, and that those working with young people understand their responsibilities and need to act appropriately.
10. Our review allowed us to test how effectively the current law is working and how well it is understood. It also allowed us to engage with organisations that work with young people across a range of sectors to understand their concerns and ensure that the right measures are in place to protect young people from inappropriate behaviour.
11. The review of positions of trust offences found significant gaps in protections offered to young persons. The current positions of trust offences are targeted at situations where the child has some dependency on the adult involved, often combined with an element of vulnerability of the child. They are directed at those who are employed to look after persons under the age of 18, for example those providing care for a child in a residential care home, hospital or educational institution. The offences deliberately do not cover all posts in which a person might have contact with, or a supervisory role of, a child aged under 18. Our review found that the current laws are failing young persons who have ultimately been abused by adults on whom they are dependent and in situations where they could be considered vulnerable.
12. The review found that this was particularly the case for sports coaches and religious/faith leaders. Sports coaches have, unlike many other roles, the opportunity to physically touch the young people in their care. Likewise, they can spend time, including overnight stays, with those in their care, and can have a very powerful influence over a young person's future in the sport. We also found that religious leaders are in a strong position of trust because of their centrality to the life not just of a young person, but of that person's whole family and community.
13. We recognise, however, that there are other roles which may be exploited in this way, which is why we will make it easier for the government to add further roles by secondary legislation if evidence suggests this is needed in the future.
14. Additionally, evidence from an academic study² reported that between 2014 and 2018, authorities were made aware of more than 650 cases of sexual activity by an individual who was potentially in a position of trust with a young adult aged 16-18. Of these 650 cases, more than 150 related to an abuse of trust in a sports coaching context and around 70 were in a faith context. This study has provided previously unknown information on the scale of the issue and highlighted the shortcomings of the current legislative framework.
15. Based on this evidence, ministers have therefore decided to expand protection by creating further "positions of trust" which would cover sports coaches and leaders in religious settings and also other roles within sports and religious settings, and also to create a provision which would allow any future government to add further positions of trust where the evidence shows it is necessary to do so.

B. Rationale and Policy Objectives

16. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).
17. In this instance, the overarching rationale for intervention are equity and efficiency: the measures outlined in this OIA will reform the criminal law in ways that will provide greater public protection,

² Source: All-Party Parliamentary Group, 2019: Positions of Trust: It's time to change the law. (<https://www.iicsa.org.uk/key-documents/19087/view/THO000080.pdf>)

increased public confidence, deter crime, and ensure that sentencers have the tools available to reflect the impact of the crime.

18. The policy objectives are:

- To introduce an amendment to the Magistrates Courts Act 1980 to remove the £5,000 summary trial cap in relation to criminal damage to memorials offences and to enable the courts to have the full range of sentencing options with regards to this type of offending.
- To extend protection by creating further “positions of trust” within sports and religious settings, and to create a provision which allows a future government to add further positions of trust.

C. Affected Stakeholder Groups, Organisations and Sectors

19. A list of the main groups and stakeholders who would be affected by the measures described in this OIA is shown below:

- Individuals and organisations responsible for the upkeep and care of memorials and/or members of the public otherwise affected by the occurrence of these crimes
- Victims of sexual exploitation and their families or other members of the public affected by the occurrence of these crimes
- Offenders and their families
- HM Prison and Probation Service (HMPPS), including the Prison Service and the National Probation Service
- HM Courts and Tribunal Service (HMCTS)
- Legal Aid Agency (LAA)
- Crown Prosecution Service (CPS)
- Electronic Monitoring Service (EMS)
- Sentencing Council
- Home Office
- Other government departments supplying services

D. Description of Proposed Measures

20. To meet the government’s policy objectives, this IA assesses the following options:

- **Option 0: Do nothing: Make no changes to the current sentencing framework**
- **Option 1: Implement the PSCS Bill criminal law measures, namely:**
 - a) **Amend the Magistrates’ Courts Act 1980 to remove consideration of monetary value with respect to criminal damage to memorials, effectively increasing the maximum sentence to 10 years where damage is less than £5,000.**
 - b) **Expand positions of trust offences to cover sports and religious settings, and allow the flexibility to add new positions of trust offences in future.**

21. Option 1 is the preferred option as it best meets the government’s policy objectives.

Option 0

22. Under this option, no changes would be made to the current sentencing framework. As a result, the various problems identified above would remain.

Option 1

23. Option 1 implements the PCSC Bill Criminal law measures, namely:

- a. **Criminal damage to memorials:** This measure introduces an amendment to the Magistrates’ Courts Act 1980, to ensure that where memorials are damaged or desecrated, the case can be tried as an either way offence regardless of the monetary value of the damage. In low value cases the courts are no longer bound by a three-month maximum penalty – but in all cases of

criminal damage to a memorial the offence is subject to the ten-year maximum penalty for criminal damage, ensuring that sentences reflect the seriousness and harm caused by the crime

- b. **Positions of trust:** This measure creates further positions of trust offences within sports and religious settings, thereby filling a gap in the law and providing greater protection to young people from manipulation and sexual abuse and exploitation. It also gives the flexibility to add new positions of trust offences in future.

E. Cost and Benefit Analysis

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

25. This IA summarises the main monetised and non-monetised impacts of the above legislative measures on individuals and groups in the UK. The costs and benefits of each legislative measure are compared to the “do nothing” option. IAs place a strong emphasis on valuing costs and benefits in monetary terms. However, there are often important aspects of a policy that cannot readily be monetised – e.g. the effects on groups in society or changes in equity and fairness.

26. We have adopted the following conventions in this IA:

- Monetised costs and benefits are stated in 2020/21 prices;
- The Net Present Value (NPV) of each measure has been calculated for a ten-year period starting in January 2021 using a 3.5 per cent discount rate; the implementation date assumed for reforms is Autumn 2021;
- Prison population volumes greater than 100 have been rounded to the nearest 50, volumes less than 100 have been rounded to the nearest 5.
- Where appropriate, 20% optimism bias has been applied to costs;
- Unless otherwise stated, the annualised costs or savings are those which would be achieved in ‘steady state’ (i.e. when the measure is fully in operation). Under Option 1, steady state is achieved in 2022/23, or Year 2 after policy implementation.

27. Low, best (or central) and high estimates are provided to better understand the types of uncertainties present in the measures. Low scenarios represent variation in modelling assumptions which result in the least overall NPV for the specific profiled policy, while high scenarios represent assumption variations yielding the highest NPV. For criminal damage to memorials, the low scenario is based on 10 in scope convictions per annum, while the high scenario is based on 60 convictions per annum. For positions of trust the low scenario is based on 15 additional convictions, while the high scenario is based on 55 convictions per annum. The best estimate is based on the mid-point for both policies. As impacts are expected to be small for Prisons Drug Testing none of the costs or benefits are monetised.

Option 1: Implement the PCSC Bill Criminal Law measures.

Costs of Option 1

Monetised Costs

HM Prison and Probation Service

28. It is estimated that this option will result in an increase in the adult prison population of around 10 offenders in steady state by 2023/24. This results in estimated additional running costs of between £0.2m and £1.5m per annum, with a best estimate of £0.6m per annum. These increases in cost are almost entirely driven by the positions of trust offences expansion measure bringing more crimes into scope, whereas the criminal damage to memorials measure has prison impacts of less than 1 place per annum.

29. Due to capacity constraints, additional prison places will need to be constructed to accommodate the additional prison demand under Option 1. The total transition cost for the construction of additional

prison capacity for all measures is therefore estimated to be between £0.9m and £6.7m, with a best estimate of £2.5m.

30. Option 1 is estimated to lead to additional costs to the probation service of between £0.08m and £0.5m per annum, with a best estimate of £0.2m per annum. These costs are driven by the higher numbers of offenders receiving community and suspended sentences, but also by the higher number of offenders receiving custodial sentences who will serve the remainder of their sentence under Probation Service supervision after being released on license.

HM Courts and Tribunals System

31. There will be estimated costs of between £0.06m to £0.2m per annum to HMCTS, with a best estimate of £0.1m per annum. These costs are largely driven by the increased caseload due to the expansion of positions of trust offences.

Legal Aid Agency

32. There will be estimated costs of between £0.04m to £0.2m per annum, with a best estimate of £0.09m per annum. These costs are largely driven by the increased caseload as a result of the expansion of positions of trust offences.

Non-Monetised Costs

Electronic Monitoring Service

33. Costs to the Electronic Monitoring Service have not been monetised due to the low expected caseload (less than 5 starts per annum in the steady state) that would result from Option 1. As a consequence, these additional costs are expected to be minimal.

HM Courts and Tribunals System and Sentencing Council

34. There may be some one-off transitional costs for HMCTS and the Sentencing Council associated with the preparation of new training or guidance material. These costs have not been monetised due to a lack of cost data, though we anticipate any additional costs will be low.

Crown Prosecution Service

35. The Crown Prosecution Service may experience additional costs due to higher caseloads in the Crown Court, which incur higher costs given the longer duration of trials. However, we are unable to realistically quantify these costs due to a lack of unit cost data. We anticipate any additional costs to be low.

Home Office

36. There may be increased costs to the Home Office from the need to monitor and manage a greater number of offenders on the Sex Offenders Register as a result of the expansion of positions of trust offences. These have not been monetised due to lack of data, though we would expect any costs to be low due to the low volumes involved.

Offenders & their Families, Other Government Departments

37. Because offenders may receive a more punitive disposal where they would have previously received a fine, they could face a greater chance of unemployment, loss of housing, negative effects on relationships or mental health. These effects could pose a cost to other areas of government by increasing demand for public goods and services such as unemployment benefits or social housing but these are not expected to be significant.

Benefits of Option 1

Monetised Benefits

38. There are no monetisable benefits to the CJS as a result of Option 1. No other benefits have been monetised due to the difficulty in quantifying the effects outlined in Paragraphs 39-40.

Non-Monetised Benefits

39. The confidence of those charged with the upkeep of memorials or other affected parties, as well as of the general public, in the CJS may be increased by these measures as sentences can better reflect the harm caused.
40. There may be a decrease in vandalism rates of war memorials and statues due to the deterrent effect of potentially tougher sentencing. This may be beneficial to those individuals, local authorities and other third-parties which manage or maintain memorials and statues in the form of reduced maintenance and repair costs. Similarly, by deterring abuse of positions of trust, young persons aged 16-18 and their relatives, may feel safer partaking in sports or activities with religious and faith leaders. However, the evidence of the existence and scale of any deterrent effects is weak³. As a result, we have not quantified any of the potential benefits of deterrence.

Summary of impacts

41. Table 1 below summarises the main components of the net impact of the measures contained in Option 1, the preferred option.

Table 1: Summary of estimated net present costs and benefits (real prices, 2020/21)

		Transition	Costs	Benefits	NPV
a) Positions of trust	<i>Monetised</i>	Around 10 prison places need to be constructed in Year 1 of policy implementation for an estimated cost of £2.5m.	An increase in the adult prison population by around 10 places per annum which increase yearly running costs by an estimated £0.5m. An additional estimated 25 probation places needed due to higher community and suspended sentence numbers increase yearly running costs by an estimated £0.1m. Increased costs to HMCTS and LAA of £0.1m and £0.06m per annum.	N/A	High: -£21.4m Low: -£3.4m Best: -£8.4m
	<i>Non-Monetised</i>	N/A	Social relations between prisoners and their families could be impaired. Increased costs to the Crown Prosecution Service due to higher caseload number. Increased costs to the Home Office for monitoring more offenders on the Sex Offenders Register. Greater demand on the NHS (England/Wales) for prisoner care.	Greater protection of vulnerable young people from exploitation by people in positions of trust. Improved victim and public confidence and protection.	

³ Source: National Institute of Justice, 2016: Five Things about Deterrence (<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>)

b) Criminal damage to memorials	<i>Monetised</i>	No additional prison capacity needs to be built because the expected prison caseload increases are less than 1 place per annum. Prison construction costs are thus treated as negligible.	An additional 30 probation places required due to increased number of community and suspended sentences. This is estimated to cost £0.09m per annum. Higher proportion of cases going to Crown court increases costs to LAA and HMCTS by a combined £0.02m per annum.	N/A	High: -£1.7m Low: -£0.3m Best: -£1.0m
	<i>Non-Monetised</i>	N/A	Social relations between prisoners and their families could be impaired. Increased costs to the Crown Prosecution Service due to more cases in Crown courts. Greater demand on the NHS for prisoner care.	Improved victim and public confidence and protection.	
Net Impact	<i>Monetised</i>	Transition costs range from a low of £0.9m to a high of £6.7m	Costs range from a low of £0.4m to a high of £2.4m	N/A	High: -£24.1m Low: -£3.9m Best: -£9.7m

F. Risks and Assumptions

42. The impacts estimated in this IA are based on certain assumptions. These assumptions, and their associated risks, are described in Table 2 below.

Table 2: Assumptions and Associated Risks

	Assumption	Risks / uncertainties
Overarching	Implementation date of the measures is Autumn 2021.	This is dependent on the Bill progressing through Parliament to the anticipated timetable without significant delays.
	Future prison, probation and community volumes are based on a mix of published data and internal projections.	It is difficult to predict future changes in the types of offences being committed and how this will impact the decisions made by sentencers. If there are significant changes in sentencing behaviour or offences being committed this will affect the estimates in this IA.
	It is assumed that any additional prison places will incur an annual running cost of £44,640 in England and Wales (excluding optimism bias) ⁴ . This is the average cost of providing a prison place for a year based on overall resource expenditure and includes staffing and estate costs, it does not cover contracted out costs or capital.	Running costs may be higher or lower depending on the specific estate required to accommodate the additional caseload and the needs of the offenders, thus pose a risk to the accuracy of our analysis of prison running costs.
	Additional prison places will need to be constructed in order to meet any increased	1. Whether Option 1 requires additional prisons to be constructed depends on what impact other

⁴ Source: HM Prison & Probation Service, 2020: Annual Report and Accounts 2019-20 Management Information Addendum (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf)

	<p>demand, the construction cost for each place is £250,000.</p> <p>It is assumed that the construction of each place will take place in the first year after policy implementation.</p>	<p>policies and external factors have on prison places simultaneously. If the additional caseload could be accommodated in existing estate, then they may incur smaller costs relative to the results of our analysis.</p> <p>2. Our analysis rests on a fixed unit prison construction cost per place of £250,000. Whilst this assumption has been provided by the relevant experts which can assure its quality, in reality the cost schedule may not be linear, thus posing a risk to the accuracy of our analysis of prison construction costs.</p> <p>3. If construction doesn't occur in Year 1 but in later years or is spread out over multiple years, then the impact on the NPV is non-negligible.</p>
	<p>Annual probation costs per offender are the same whether the offender is out on license, serving a community sentence, or serving a suspended sentence.</p>	<p>This assumption is based on the average cost for all forms of probation. In practice however there may be nuanced differences between the forms of probation which can result in different costs, and the cost schedule may be linear. There is a risk that actual costs could be higher or lower.</p>
	<p>An optimism bias of 20% has been applied to all costs and benefits.</p>	<p>This is standard practice in IAs to account for unforeseen costs or over-estimated benefits. Therefore, it may be the case that monetised costs and benefits are lower than estimated.</p>
	<p>The proportion of cases eligible for legal aid is 100% in Crown Court and 50% in Magistrates' Court.</p>	<p>If legal aid eligibility is lower in the Crown Court then this would reduce legal aid costs. Conversely if legal aid eligibility was higher in the magistrates then this would reduce costs versus the counterfactual, due to a higher proportion of cases in the crown courts in option 1.</p>
	<p>It has been assumed that on average all offenders given custodial sentences for the offence are released from custody at 50% of their sentence to serve the remainder on license.</p>	<p>If the average proportion of sentence served is significantly different from 50%, then prison costs and probation costs may be different from the results produced in our analysis. E.g. if some offenders don't qualify for automatic halfway release. This could have implications for prison costs (increase) and probation costs (decrease) but because prison is more expensive it would increase overall costs.</p>
	<p>The average community sentence length and the average suspended sentence length under Option 1 are equal to the average observed for all offenders.</p>	<p>We were only able to obtain this data for all offenders who have breached their sentences, which is a subset of all the offenders that receive community or suspended sentences. This subset may not be representative of the wider population thus pose a risk that the figures used in our analysis are inaccurate. There is also a further risk that the sentence lengths under Option 1 substantially differ from the average for all offences. We have built some sensitivity analysis around this by having the average community sentence lengths in the high and low scenario be 20% longer and shorter, respectively, than the average used for the central scenario. For suspended sentences, the range used is 10% longer and shorter than the average.</p>
Criminal damage to memorials	<p>Offences are tried in Courts under the category "Criminal Damage".</p>	<p>If this were to change under future legislation, then the costs to HMCTS and LAA from this analysis may no longer be accurate.</p>
	<p>The number of cases that will be sentenced for this offence every year range from 10 to 60, with a best estimate of 35.</p>	<p>These figures are based on a mixture of published research and internal projections. The range is meant to illustrate the difficulty and uncertainty associated with forecasting caseloads. Long term trends in cases of criminal damage to memorials that we were unable to identify could result in significantly lower or higher caseloads under the new legislation compared to the figures used in</p>

		this IA and there is a risk that costs to different stakeholders could be higher or lower.
	Assumptions around the Criminal Justice System outcomes for changes to criminal damage to memorials are based on a proxy offence (racially or religiously aggravated criminal damage), calculated from an annual average of the relevant statistics between 2015-2019. This was selected as an offence with similar severity (13 year maximum sentence) and type (criminal damage).	While the racially or religiously aggravated criminal damage offence has been carefully selected as a proxy due to the similar nature of the offence and sentencing severity, it remains a proxy and thus an imperfect measure of the statistics that might be observed for criminal damage to memorials under Option 1.
	The average custodial sentence length (ACSL) is based on a five-year annual average of the observed sentence lengths of the racially or religiously aggravated criminal damage offence from 2015 to 2019.	There is a risk that the choice of proxy is imperfect and that the actual sentencing lengths differ considerably between the two offences. To partially account for this uncertainty we have used the low and high scenarios to provide a ranged estimate for the ACSL, with the low (high) scenario using the lowest (highest) observed ACSL for the proxy offence during the five-year timeframe.
Positions of trust	Offences are tried in Courts under the category "Sexual Offences" and hence unit costs are calculated on this basis.	If this were to change under future legislation, then the costs to HMCTS and LAA from this analysis may no longer be accurate.
	The number of cases that will be sentenced for this offence every year range from 15 to 55, with a best estimate of 30.	These figures are based on a mixture of published research and internal projections. The range is meant to illustrate the difficulty and uncertainty associated with forecasting caseloads. Long term trends in cases of abuse of positions of trust that we were unable to identify could result in significantly lower or higher caseloads under the new legislation compared to the figures used in this IA and there is a risk that costs to different stakeholders could be higher or lower.
	The progression of cases through the courts for the professions newly included as positions of trust will follow the existing pattern for the current positions of trust offence, calculated from an annual average of the relevant statistics between 2015-2019. The split of cases between Crown and Magistrates' Courts will remain the same (68% and 32%, respectively). Sentencing breakdowns, the proportion of total cases receiving each disposal type (community sentence, custody, etc.), will also remain constant.	This has been assumed because the policy aims to broaden the base of an existing offence to include more settings, so it is likely that the same sentencing breakdowns will apply. However, if sentencing behaviour changes then our caseload projections for each agency, and subsequently the estimated costs, may be significantly higher or lower than reality.
	The average custodial sentence length (ACSL) is based on a five-year annual average of the observed sentence lengths of the existing abuse of positions of trust offence from 2015 to 2019.	There is a risk that the actual sentencing lengths may differ due to a change in sentencing behaviour. To partially account for this uncertainty we have used the low and high scenarios to provide a ranged estimate for the ACSL, with the low (high) scenario using the lowest (highest) observed statistic during the five-year timeframe.

G. Wider impacts

Equalities

43. We hold the view that none of the PCSC Bill measures are likely to be discriminatory within the meaning of the Equality Act 2010 as they will not result in anyone being treated less favourably because of a protected characteristic or be likely to result in a particular disadvantage for anyone

sharing a protected characteristic compared to those who do not. Please see the separate overarching equalities impact assessment published alongside this IA for further details

Impact on small and micro businesses

44. There are not assumed to be any direct costs or benefits to business.

Better regulation

45. These measures are exempt from the Small Business Enterprise and Employment Act 2015 and will not count toward the department's Business Impact Target.

International Trade

46. There is no significant impact on international trade.

Environmental Impact Assessment

47. We expect there to be no environmental impacts as a result of Option 1.

Family Impact Test

48. There is no significant impact on families.

H. Monitoring and Evaluation

49. The measures will be reviewed in the normal way for post legislative scrutiny.