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|--|---|--|-------------------------|
| Title: Victims and Prisoners Bill – Parole Clauses IA No: MoJ051/2023 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: HMPPS | Impact Assessment (IA) | | |
| | Date: 29/03/2023 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Primary legislation | | |
| Contact for enquiries: Antony.Thompson1@justice.gov.uk | | | |
| Summary: Intervention and Options | | | RPC Opinion: N/A |

| Cost of Preferred (or more likely) Option (in 2023/24 prices) | | | |
|---|----------------------------|-------------------------------|-------------------------------|
| Total Net Present Social Value | Business Net Present Value | Net cost to business per year | Business Impact Target Status |
| -£462.9m | N/A | N/A | Not a regulatory provision |

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

The Parole Board for England and Wales is an independent executive non-departmental public body. It is required by statute to determine, through application of a release test, whether the continued detention of a parole-eligible prisoner is necessary for the protection of the public. Over time, the way the release test has been interpreted by the courts has become a balancing exercise between the conflicting interests of the public and the prisoner, which was not the original intention of Parliament. In March 2022, the government published the Root and Branch review of the parole system, which identified a need for greater ministerial oversight of Parole Board decisions to release offenders who have committed the most serious crimes (the “top tier” cohort).

What are the policy objectives and the intended effects?

The purpose of this policy is to make improvements to the parole system so that the public is better protected and can have greater confidence in the system. This includes codifying the statutory release test and making changes to the role of the Parole Board chair. For a ‘top-tier’ comprised of those offenders who have committed the most serious offences, the Bill will introduce a power for the Secretary of State to review and, if necessary, refuse to release a prisoner if he does not judge that the release test has been met. The Parole Board will also be able to refer top-tier cases directly to the Secretary of State where it considers it appropriate to do so, including when it is unable to adequately assess the prisoner’s risk to the public. The bill also introduces the requirement for Parole Board panels to include members with law enforcement backgrounds.

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

Two options are considered in this Impact Assessment:

- **Option 0 - Do nothing:** Make no changes to the parole system.
- **Option 1 - Implement the changes to the parole system set out in the Root and Branch review and make changes to the role and appointment of the Parole Board Chair, to create a “precautionary” principle around parole decisions and improve public confidence in the system.**

Option 1 is the preferred option because it best delivers on government policy.

| | | | | | |
|--|--|--------------|----------------|--------------------|--------------|
| Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A | | | | | |
| Does implementation go beyond minimum EU requirements? | | | N/A | | |
| Is this measure likely to impact on trade and investment? | | | N/A | | |
| Are any of these organisations in scope? | | Micro | Small | Medium | Large |
| | | No | No | No | No |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | Non-traded: | |
| | | | N/A | 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 **SELECT SIGNATORY:** _____ **Date:** _____

Summary: Analysis & Evidence

Policy Option 1

Description: Implement the changes to the parole system set out in the Root and Branch review, make changes to the role and appointment of the Parole Board Chair and reform the current system to create a “precautionary” principle around parole decisions and to improve public confidence in the system.

FULL ECONOMIC ASSESSMENT

| Price Base Year: 23/24 | PV Base Year: 24/25 | Time Period Years: 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---------------------------|------------------------|--------------------------|---------------------------------------|----------------|-----------------------|
| | | | Low: -62.0 | High: -1,246.4 | Best Estimate: -462.9 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|-------------------------------|
| Low | 23.8 | 5.0 | 65.7 |
| High | 702.6 | 82.0 | 1,335.0 |
| Best Estimate | 238.3 | 32.1 | 496.6 |

Description and scale of key monetised costs by ‘main affected groups’

By March 2034, and based on the Central scenario, there will be an additional 640 prison places required, with an additional annual running cost of £28.7m. Under this scenario, additional prison capacity will be needed with an estimated construction cost of £238.3m over the next 10 years. Over the next 10 years, for annual average costs, additional Parole Board costs are estimated to be £0.7m; Additional Public Protection Casework Section (PPCS) costs are estimated to be £1.5m due to the resourcing required for new ministerial powers; There will be additional costs for legal aid of £0.9m; and HM Courts & Tribunals Service - Upper Tribunal will be £0.3m through increased caseloads (2023/24 prices).

Other key non-monetised costs by ‘main affected groups’

Non-releases and a reduced licence period could disrupt offenders’ and family relationships and reduce opportunities for rehabilitation in the community, potentially leading to higher reoffending due to less post-custody rehabilitation activity from the probation service. In recent months there has been an exceptional increase in the adult male prison population creating acute short and medium-term population pressures. To accommodate a large increase in demand for prison places, we would have to consider demand reduction elsewhere in the system. We have increased the use of crowding in prisons which can cause more tension in the prison community and create additional costs for the prison service.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | 0.0 | 0.4 | 3.7 |
| High | 0.0 | 10.5 | 88.6 |
| Best Estimate | 0.0 | 3.9 | 33.6 |

Description and scale of key monetised benefits by ‘main affected groups’

Option 1 will result in some offenders spending less time under licence supervision in the community. In the central scenario, this will generate average annual savings to the probation service of £3.9m across the 10-year appraisal period (2023/24 prices). If demand reduction options are used elsewhere in the system to mitigate an increase in demand for prison places, this may lead to an increase in use of probation.

Other key non-monetised benefits by ‘main affected groups’

The statutory release test will ensure Parole Board decisions are robust and focused on public protection. Application of the ministerial oversight of parole decisions to prevent a release where there are doubts that the release test has been met will provide reassurance that no offender is being released without thorough scrutiny of the decision, which could lead to a reduction in Serious Further Offences (SFOs), and improve public confidence in the justice system.

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

A full list of assumptions and risks is provided in section F. Given the high degree of uncertainty involved in estimating the impacts of this option, three scenarios are provided, where: the Central scenario provides a best estimate; the Low scenario provides the least impact on the prison population; and the High scenario provides the highest impact on the prison population.

BUSINESS ASSESSMENT (Option 1)

| | |
|---|---|
| Direct impact on business (Equivalent Annual) £m: | Score for Business Impact Target (qualifying provisions only) £m: N/A |
| Costs: N/A | Benefits: N/A |
| Net: N/A | |

Evidence Base

A. Background

1. The Parole Board was established in 1968 under the Criminal Justice Act 1967. It became an independent executive non-departmental public body (NDPB) on 1 July 1996 under the Criminal Justice and Public Order Act 1994. It works to protect the public by risk assessing parole-eligible prisoners to decide whether they can be safely released on licence into the community and to confirm the continued detention of the prisoner where they cannot.
2. The statutory functions of the Parole Board (as provided for in the Crime (Sentences) Act 1997 and the Criminal Justice Act 2003) include:
 - Making decisions on the release of indeterminate sentenced prisoners after the expiry of the minimum period in prison set by the sentencing court – and the release of some determinate sentence prisoners prior to an automatic release date (some extended sentences and discretionary conditional release sentences).
 - Where responsible for the initial release of the prisoner, making decisions on the licence conditions needed to manage the offender's risk in the community – and any subsequent variation to those conditions.
 - Making decisions on the re-release of all indeterminate sentence prisoners who have been recalled to prison for breaching their licence conditions – and certain recalled determinate sentence offenders.
3. Whilst elements such as general risk of re-offending and good behaviour in prison are taken into account by the Board, it is important to stress that the offender's potential risk of causing serious further harm to the public is the deciding factor in parole decisions. If the Board determines that an offender's risk cannot be safely managed in the community through licence conditions and supervision by the Probation Service, then they will not be released and will remain in prison pending a further review.
4. In 2019, the government's manifesto committed to conducting a Root and Branch review of the Parole system to improve accountability and public safety. This review was published on 30th March 2022, setting out a range of reforms to the parole system to increase transparency, improve victims' experience and improve public safety. The review proposed several changes that require primary legislation, including codifying the statutory release test and introducing a power for the Secretary of State to review and, if necessary, refuse release decisions for the most serious offenders. These changes, along with changes to the appointment of Parole Board members and the role of the Chair, are the subject of this section of the Bill and this Impact Assessment (IA).

B. Rationale and policy objectives

Rationale

5. The conventional approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (for example, waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (for example, to reallocate goods and services to the needier groups in society).
6. In terms of the options considered in this IA, however, the primary rationale is to improve the way the parole system operates by means of introducing a precautionary principle to the release of the most serious offenders. The reforms, described in detail below, aim to enhance public confidence in the

system by increasing the scrutiny of release decisions for offenders who have committed the most serious offences and will ensure public protection is at the core of every decision.

Policy Objectives

7. The associated policy objective is to change the parole system to make the statutory release test clearer and prescriptive, alongside creating a process that includes ministerial oversight of release decisions for a new top-tier cohort of offenders that allows ministers to refuse release. Furthermore, the changes will allow for the fullest range of experience amongst the Parole Board's membership, by mandating that members with law enforcement experience must sit on panels in top-tier cases. The changes will also make clear the role of the Parole Board Chair and clarify their terms of appointment. Taken together, these reforms will improve public confidence by ensuring that public protection is at the core of decision-making and release decisions of offenders who have committed the most serious offences will be subject to increased scrutiny.
8. The proposed reforms relating to the above are described in more detail in Section D below.

C. Affected Stakeholder Groups, Organisations and Sectors

9. The following groups will be most affected by the options considered in this IA:

- Parole Board for England and Wales
- Victims and the general public
- Prisoners and their legal representatives
- Prisoners' families
- HM Prison and Probation Service (HMPPS)
- Victim Liaison Officers (VLOs)
- HM Courts and Tribunals Service (HMCTS)
- Health and Social Care Providers
- Legal Aid Agency (LAA)
- Parole Board report writers and witnesses at hearings

D. Options under consideration

10. To meet the Government's policy objectives, this IA assesses the following two options:

- **Option 0 - Do nothing:** Make no changes to the parole system.

Option 1 - Implement the changes to the parole system set out in the Root and Branch review and make changes to the role and appointment of the Parole Board Chair, to create a "precautionary" principle around parole decisions and improve public confidence in the system.

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

Option 0: Do nothing

12. Under this option, the reforms to the parole system and Parole Board membership that were detailed in the Root and Branch review and the reforms to the role of the Parole Board Chair would not be implemented. We would therefore not realise the policy objective of ensuring public protection is at the core of decision-making and increasing public confidence in the system.

Option 1: Implement the changes to the parole system set out in the Root and Branch review and make changes to the role and appointment of the Parole Board Chair, to create a “precautionary” principle around parole decisions and improve public confidence in the system.

13. This option will support the delivery of the policies outlined in the Root and Branch Review of the Parole System, a government manifesto commitment, and the policy to clarify the role and terms of appointment of the Parole Board Chair. The main measures are described in more detail below.

The statutory release test

14. The Statutory Release Test is used by the Parole Board when assessing whether it is safe for a prisoner to be released into the community. This test applies to all parole-eligible prisoners and where the Board is considering re-release of offenders who have been recalled to prison for breaching the terms of their licence.

15. Under Option 1, the government will set out the test in statute in order to clarify its meaning and purpose, and to ensure the focus of the test is on the offender’s potential risk of harm. The test will include the a list of specific statutory criteria that the Parole Board must consider as part of the release test. This will remove any ambiguity surrounding the factors the Board are to take into account, to ensure consistent application of the release test.

Creation of top-tier offender cohort

16. The Root and Branch review set out the need for a more precautionary approach to releasing offenders, in particular, those who have committed the most serious offences and who may go on to commit another offence that causes serious harm if released. The review identified a need for greater safeguards whenever the Parole Board determines that any of these prisoners is suitable for release.

17. Option 1 will therefore create of a “top-tier” cohort of prisoners who have committed murder, rape, certain terrorist offences or who have caused or allowed the death of a child. The Review concluded that any decision to release an offender in the top tier should be subject to greater scrutiny by enabling the Secretary of State to call in the Parole Board’s decision, review it and, if necessary, refuse the prisoner’s release.

Changes to the Parole Board’s power to direct release and a new ministerial power of refusal

18. As part of the ‘precautionary approach’ outlined in the Root and Branch review, Option 1 will create new powers to enable the Secretary of State, if they so decide, to review any case in which the Parole Board has decided to release a top tier prisoner. The Board may also refer a case to the Secretary of State to take the decision where it considers it appropriate to do so, including when it is unable to adequately assess the prisoner’s risk to the public.

19. On referral, the Board’s decision to release the prisoner will be quashed and, instead, the Secretary of State will consider the case, applying the same release test as the Parole Board and to make a judgement as to level of risk the prisoner may pose to public safety if released. In reaching a decision, the Secretary of State may make such findings of fact as they consider appropriate on the evidence before them. The Secretary of State must not release the prisoner unless satisfied that their imprisonment is no longer necessary for public protection.

20. In cases where the Secretary of State has taken a decision not to release a prisoner, the prisoner will be able to appeal this through a new route of appeal to the Upper Tribunal. The grounds for such an appeal are that the Secretary of State’s decision is flawed, for example, because it is irrational, or that the prisoner does not pose more than a minimal risk to the public. If the Upper Tribunal finds the

Secretary of State's decision is flawed, it must remit the decision to the Secretary of State to retake, otherwise it must confirm the decision.

21. When assessing an appeal on the grounds of whether or not the release test has been met (whether or not the prisoner poses more than a minimal risk to the public), the Upper Tribunal must consider the same public protection test that has been applied at first instance by the Parole Board, and subsequently the Secretary of State when reviewing the case. The Upper Tribunal must either confirm the Secretary of State's decision, or otherwise, direct the prisoner's release, if it is satisfied that there is no more than a minimal risk of the prisoner committing a further offence that will amount to serious harm if they are released.

Interpretive provision relating to the release legislation

22. This option also contains two measures which bring forward reforms contained in the Bill of Rights Bill (introduced to Parliament in June 2022) which will guide interpretation of the new parole clauses, as well as Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 Act, Chapter 6 of Part 12 of the 2003 Act, section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and all secondary legislation made under these provisions. These provisions span the full legislative framework in England and Wales relating to release, licences, supervision, and recall of indeterminate and determinate sentenced offenders.
23. The measures under this option will disapply section 3 of the Human Rights Act 1998 so that if incompatibilities do arise with the new parole measures, or any of the other release measures, courts (and others) will not be under the obligation to interpret the provisions compatibility "so far as it is possible to do so". The purpose of this is to avoid courts adopting a strained section 3 interpretation, which ultimately disregards the policy intentions of the release regime. The measures will also provide that, where a court is considering a challenge relating to a relevant Convention right, in relation to application of any of the release legislation, the court must give the greatest possible weight to the importance of reducing the risk to the public from the offender.

Parole Board members with a law enforcement background on panels

24. The Government is taking steps to increase the number of independent Parole Board members with law enforcement experience, and for these members to sit on panels for 'top-tier' offenders. This is intended to bring a different perspective on offending and offenders in the criminal justice system from those with first-hand experience of assessing risk to the public, adding to the collective knowledge and experience of the Board.
25. In order to facilitate this, this option will provide that the Parole Board is statutorily required to include among its members those with law enforcement experience, by which we mean those with experience in the prevention, detection and investigation of offences. Option 1 will add this requirement to the existing list of members the Board must have under section 239 of, and Schedule 19 to, the Criminal Justice Act 2003. The Bill will also give the Secretary of State the power, via the Parole Board Rules, to require specific types of cases to be dealt with by Parole Board members with specific professional backgrounds. The Rules will be amended following the Bill's Royal Assent to require members with a law enforcement background to sit on panels in top-tier cases.

Clarifying the role of the Parole Board Chair and the terms of their appointment and dismissal

26. The Chair of the Parole Board is a public appointment, and currently the exact terms of this appointment are not set out in legislation. Under Option 1, the Bill will provide that the Secretary of State appoints the Chair for a three-year tenure, which may be renewed for a further three years. Under this option, the Secretary of State will have the additional statutory power to remove the Board Chair on the ground that it is necessary for the maintenance of public confidence in the parole system.
27. This option will also clarify the role of the Parole Board Chair, to draw a clear distinction between the role of the Chair and the members of the Parole Board. To do this, this Bill will set out a closed list of

responsibilities to make clear that their role is one of Strategic leadership. The Bill will also provide that the Secretary of State for Justice to appoint the Vice-Chair for a tenure of five years, with the option to renew for a further five years.

28. This change will not be considered further in the Impact Assessment (IA) due to there being no anticipated impacts.

E. Cost and Benefit Analysis

29. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
30. 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. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetised and non-monetised costs and benefits, with due weight given to those that are not monetised.
31. The costs and benefits of each proposal 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).
32. Estimated impacts quoted in the IA greater than 1,000 have been rounded to the nearest 50, volumes less than 1,000 have been rounded to the nearest 10 and volumes less than 10 have been rounded to the nearest 1.
33. The annual costs and benefits are presented in average terms across the 10-year appraisal period. A social discount rate of 3.5 per cent is used to discount future values to present values, in line with HM Treasury Green Book guidance.
34. Unless otherwise stated, all costs and benefits are in 2023/24 prices (price base year) with a 2024/25 present value base year (in line with the expected implementation date).
35. Unless otherwise stated, a 20% optimism bias has been applied to all impacts (costs and benefits).
36. Given the uncertainty present within the impact estimates, three scenarios have been assessed in line with HM Treasury Green Book guidance. In the High scenario, assumptions have been aligned to provide a reasonable upper limit of additional prison places and Parole Board resource required. In the Low scenario, assumptions have been aligned to provide a reasonable minimum number of prison places and Parole Board resource required. In the Central scenario, we have used what we believe to be the most realistic assumptions to provide a ‘best estimate’ of the likely impacts.
37. Given these changes relate to offenders with long sentence lengths, the impacts will take a number of years to reach a steady state. In all three scenarios of the considered, the steady state impacts occur outside of the appraisal period, and therefore annual costs may increase following the 10-year appraisal period. However, c.90% of the policy impact is expected within the 10-year appraisal period in the best estimate.
38. In accordance with MoJ appraisal guidance, the direct impacts on offenders serving imprisonment are not included in this IA as these relate to the sentence of the courts. However, an assessment of the post-release impacts on them, their families and wider society are included where relevant.

Data and Methodology

39. This IA only assesses the impact of changes on top-tier offenders. The release rates and Parole Board decision making for non-top-tier cases are therefore assumed to be unaffected. However,

given the changes implemented under Option 1 there is a risk that the release rate for other parole-eligible offenders could decrease which would lead to increased pressure on the prison estate and Parole Board.

40. Table 1 below shows that between 2016/17 and 2020/21, the Parole Board completed an average of 1,932 reviews of cases who would be classified as 'top-tier' per annum. Of these, an average of 651 offenders were released per annum. The impact modelling below uses these volumes as the baseline across the appraisal period. These volumes are assumed to be the same across all three scenarios provided.

Table 1: Parole Board top-tier release outcomes by offence type¹

| Index Offence | | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | Average |
|--|-------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Murder | Releases | 366 | 384 | 344 | 309 | 375 | 356 |
| | Completed Reviews | 967 | 959 | 925 | 804 | 930 | 917 |
| Rape | Releases | 273 | 317 | 259 | 280 | 312 | 288 |
| | Completed Reviews | 1,041 | 1,068 | 916 | 958 | 1,013 | 999 |
| Terrorism Related | Releases | 1 | 9 | 3 | 9 | 12 | 7 |
| | Completed Reviews | 6 | 16 | 9 | 14 | 31 | 15 |
| Causing or allowing the death of a child | Releases | 0 | 0 | 1 | 0 | 0 | 0 |
| | Completed Reviews | 0 | 0 | 1 | 1 | 1 | 1 |
| Total Releases | | 640 | 710 | 607 | 598 | 699 | 651 |
| Total Completed Reviews | | 2,014 | 2,043 | 1,851 | 1,777 | 1,975 | 1,932 |

¹ A parole review is completed if it results in a release, a recommendation for transfer open conditions or a negative decision. The data have come from administrative IT systems which, as with some large-scale recording systems, are subject to possible errors with data entry and processing and may be amended as part of data cleansing or updates.

Source : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064528/Parole_Board_Release_-_managementn_information.docx

41. Under **Option 1**, the overall release rate following a Parole Board hearing for top-tier offenders is expected to reduce, due to the impacts of the statutory release test. A four-percentage point reduction is applied to the Central scenario, and an eight percentage point reduction is applied to the High scenario. There is no reduction in the release rate assumed in the Low scenario.
42. It is assumed that the Parole Board will only refer a small proportion of cases directly to the Secretary of State although all top-tier release decisions will be eligible to go to the Secretary of State to consider for refusal. Assumptions on the proportion of cases that ministers decide to refuse have been informed by estimates of the most serious high risk and high-profile cases. In the Central scenario, it is assumed that 20% of Parole Board decisions to release in top-tier cases are subsequently refused by the Secretary of State. However, given the limited evidence and high degree of uncertainty here, a broad range has been captured across the High and Low scenarios.
43. Where the Secretary of State has taken a decision not to release, the prisoner will be able to appeal this through a new route of appeal to the Upper Tribunal. Given the highly uncertain nature of the appeals process, we have assumed that 50% of appeals will be successful in our Central scenario, with a 70% and 30% success rate in our Low and High scenarios, respectively.
44. For top-tier decisions not to release, it is assumed that cases will be eligible for review again 17 months later. This has been informed by estimates on the average time taken between Parole Board reviews for offenders. The Low and High scenarios assume 15 and 19 months respectively. It is assumed that non-released offenders will be directed to an oral hearing again when they come up for re-review.
45. Given that option 1 will require members with a law enforcement background to sit on panels in top-tier cases, the Parole Board will be limited in their ability to conduct top-tier hearings until the recruitment and training of new members has been completed. It is assumed that sufficient members are able to be recruited prior to implementation, and that from 2024/25 onwards, the maximum capacity is assumed to be 3,000 cases per year. These estimates are based on current levels and planned recruitment of panel members with a law enforcement background, and the expected time required to complete a top-tier hearing following policy changes.

Option 1: Implement the changes to the parole system set out in the Root and Branch review and make changes to the role and appointment of the Parole Board Chair, to create a “precautionary” principle around parole decisions and improve public confidence in the system.

Costs of Option 1

Monetised costs

HMPPS - Prison estate

46. It is estimated that Option 1 will increase the prison population by between 60 and 1,870 by 2033/34, with a best estimate of 640. This is primarily due to top-tier offenders spending longer in prison through a reduced release rate and the application of the new ministerial power of refusal. By the end of 2024/2025, the increase in the prison population is estimated to be between 20 and 310. Across all three scenarios, the prison population is expected to increase further beyond the 10-year appraisal period, however in the Low and Central scenarios, c.90% of the increase is expected within the appraisal period.
47. The annual running cost of a prison place is assumed to be £62,500. This is based on the published cost per prison place in 2020/21 of £48,410 inflated to current (2023/24) prices and adjusted for optimism bias. The annual running cost of additional prison places is estimated to be between £4.0m and £116.9m in year 10, with a best estimate of £39.9m (2023/24 prices).

48. In order to accommodate the additional prison place demands, an additional 60 to 1,870 prison places would need to be constructed by 2033/34. It is assumed that the construction cost per each additional new place is £352,000. This is based on an internal cost estimate of £250,000 in 2019/20, inflated to current (2023/24) prices and adjusted for optimism bias. To account for the relative price effect observed in the construction sector, costs in each year are inflated using the Building Cost Information Service (BCIS) and deflated using the GDP deflator to calculate real prices.
49. New prison capacity can be provided in numerous ways, so construction costs are based on the cost per place of a combination of provisions including new builds and refurbishments and is based on the nominal costs of each project, using a modelled profile of build. It should be noted that these costs are indicative and will vary depending on the type of estate being built and whether any increase in prison population could be accommodated in the existing estate.
50. The total transition cost for the construction of additional prison places is therefore estimated to be between £23.8m and £702.6m, with a best estimate of £238.3m (2023/24 prices).
51. The total costs of Option 1 to the HMPPS prison service over the 10-year appraisal period is estimated to be between £50.0m and £1,285.1m, with a best estimate of £466.8m (PV, 2024/25 base year).

Parole Board

52. Under Option 1, the Parole Board is expected to conduct more hearings due to an overall reduction in releases, which will result in more offenders coming up for re-review at a later date. Offenders coming up for re-review are assumed to be directed to an oral hearing following a paper hearing. On average, it is expected that the Parole Board will review between 40 and 620 additional cases per annum between 2024/25 and 2033/2034.
53. The cost of a paper hearing is assumed to be £420, and an oral hearing is assumed to be £2,020 (including optimism bias). This is based on the published unit cost of £320 for paper hearing and £1,550 for an oral hearing, as given in the Parole Board's 2021/22 annual report, inflated to current (2023/24) prices and adjusted for optimism bias.
54. Given additional cases are expected to be subject to both a paper and oral hearing, each additional review is therefore assumed to cost the Parole Board £2,430. Average yearly costs in the 10 years between 2024/25 and 2033/34 are estimated to be between £0.1m and £1.5m, with a best estimate of £0.7m (2023/24 prices).
55. The total cost of these changes to the Parole Board are estimated to be between £0.7m and £12.5m, with a best estimate of £5.5m (PV, 2024/25 base year).

Public Protection Casework Section (PPCS)

56. The new ministerial power of refusal will require additional resourcing from PPCS in order to consider and process cases. Resource planning estimates from within Ministry of Justice have been used to estimate the additional number of staff required to enable this change.
57. Yearly pay, national insurance and pension costs from 2021/22, split across each reporting grade have been used to calculate additional costs incurred by PPCS. These have been uplifted to reflect expectations of 2023/24 pay. The average annual costs on PPCS are estimated to be between £1.2m and £1.7m, with a best estimate of £1.5m (2023/24 prices). Total costs to PPCS are estimated to be between £11.0m and £14.8m, with a best estimate of £13.5m (PV, 2024/25 base year).

HMCTS

58. HMCTS is estimated to incur additional costs through the Upper Tribunal, with new cases due to offenders appealing refusal decisions through new ministerial powers. It is estimated that on average between 70 and 250 additional appeals per annum will be heard through the Upper Tribunal.

59. Unit costs for each hearing are based on HMCTS estimates. Average annual costs to HMCTS are estimated to be between £0.2m and £0.6m with a best estimate of £0.3m (2023/24 prices). Total costs to HMCTS are estimated to be between £1.4m and £5.0m, with a best estimate of £2.7m (PV, 2024/25 base year).

Legal Aid Agency (LAA)

60. Additional costs will be incurred by the LAA due to legal aid required for additional eligible Parole Board hearings and Upper Tribunal cases. It is estimated that on average between 20 and 490 legal aid eligible oral hearings will take place each year, and between 50 and 200 legal aid eligible Upper Tribunal hearings.

61. Unit costs are based on internal estimates. The average annual costs to the LAA are estimated to be between £0.3m and £2.1m, with a best estimate of £0.9m (2023/24 prices). Total costs to the LAA is estimated to be between £2.6m and £17.6m, with a best estimate of £8.1m (PV, 2024/25 base year).

Non-monetised costs

HMPPS Prison Service

62. There are some potential wider impacts that have not been possible to quantify due to the limited evidence of the impact of longer prison terms. There is some evidence that indicates that prisoners in custody for longer come to terms with their offending and are able later in their sentence to begin constructive activities². However, research also shows that serving longer sentences can be a risk factor linked to an increased risk of self-harm while in prison (as well as being on remand and/or unsentenced) which then creates additional costs for HMPPS prison service³.

63. In recent months there has been an increase in the adult male prison population creating acute short and medium-term population pressures. Since the changes in this Bill are expected to increase the prison population over time, there is the possibility that this could impact further upon crowding. Although crowding is not in and of itself a cause of prison violence, it could impact upon the ratio of staff to offenders and the ability to provide a full regime of activities including time out of cell, a factor which is associated with increased levels of violence and self-harm. If this were to result, it could also have an associated impact on prisoners' rehabilitation and cause additional costs for the HMPPS prison service.

64. There will be some additional administrative demands on prisons, primarily in relation to handling the correspondence that will be generated between HMPPS HQ and the prisoner in connection with the ministerial oversight of release decisions for top-tier cases and the subsequent right of appeal to the Upper Tribunal.

Victim Liaison Officers

65. Victim Liaison Officers (VLOs) will be required to advise victims and assist them in respect of their new rights to make submissions to the Parole Board. VLOs will be provided with appropriate guidance and additional training where applicable. Costs are expected to be negligible and met within existing budgets.

Report writers including witnesses at parole hearings

² Crewe, B., Hulley, S., & Wright, S. (2017). Swimming with the tide: Adapting to long-term imprisonment. *Justice Quarterly*, 34(3), 517-541.

³ MOJ (2013). Self-harm by adult men in prison: a rapid evidence assessment <https://www.gov.uk/government/publications/self-harm-by-adult-men-in-prison-a-rapid-evidence-assessment>

The release test, including the addition of criteria that must be taken into account, may mean that writing reports for parole becomes slightly more complex and time-consuming, including for witnesses. However, we do not believe the impact will be significant because the release test is intended to clarify its meaning and purpose rather than make substantive changes to what is being assessed. Therefore, while the presentation of reports may need to be updated, the contents of reports should be very similar to what is provided now.

Parole Board

66. Any transition costs to the Parole Board have not been considered. These are expected to be small and should be limited to training and producing guidance.
67. The prescriptive release test may also impact the Parole Board in terms of needing to produce more complex decision-letters which address all aspects of the test and potentially requiring longer hearings to inform the decisions. Capacity constraints are discussed in more detail below in the Risk and Assumptions section (Section F).

Offenders and their families

68. If prisoners remain in custody for longer, this could have a negative impact on their families as they will be apart for longer. Living with immediate family post-release also appears to be a protective factor against reoffending. Therefore, being in prison for longer periods could increase the risk of relationship breakdown, thereby removing this protective factor and increasing the risk of reoffending.
69. Prisoners affected by the changes will serve a longer period of time in custody, and therefore less on licence to support their transition into the community. It is unknown how this will impact upon their successful reintegration into society. However, there is a risk that this could increase demand on prisons to provide offending behaviour interventions while in custody and reduce the probation service's capacity to provide the full range of rehabilitative services. This in turn could impact on the likelihood that the affected offenders will reoffend.

Health and social care

70. NHS England/Wales are responsible for commissioning and delivering health services in prisons in England and Wales. With some prisoners in custody for longer, there will be an impact on the provision of healthcare in prison, which has higher costs than the provision of healthcare in the community. It has not, however, been possible to quantify this.
71. In particular, ageing prisoners currently require social care to be provided in custody. While there will be a reduced period in the community over which any care is required, the costs of social care in custody can be higher, so this could result in a net cost to DHSC and local authorities in England, and to the Welsh Government. Again, it has not been possible to quantify this.

Benefits of Option 1

Monetised benefits

Probation Service

72. Option 1 will result in top-tier offenders spending longer in custody on average. The additional time spent in custody would have otherwise been spent under licence supervision in the community. Because of this, any increase in the prison population will result in an equivalent reduction in the population of offenders on licence in the community.
73. As a result, there will be between 60 and 1870 fewer offenders under licence supervision in 2033/2034, with a best estimate of 640, based on the increases in the prison population.

74. Internal cost estimates are used to calculate savings to the probation service. Average annual savings are estimated to be between £0.4m and £10.5m, with a best estimate of £3.9m (2023/24 prices). Total benefits are estimated to be between £3.7m and £88.6m, with a best estimate of £33.6m (PV, 2024/25 base year). base year).
75. If demand reduction options are used elsewhere in the system to accommodate the increase in demand for prison places, this may cause an increase in use of probation.

Non-monetised benefits

Offenders' Legal Representatives

76. Increases in the number of cases going before the Parole Board will benefit those offenders' legal representatives through additional income from legal aid. While legal representatives will also need to familiarise themselves with the prescriptive the release test, we anticipate this to be minor.

Victims and the general public

77. The statutory release test will improve transparency of the process by listing the criteria which the Parole Board must take into account when considering a prisoner's suitability for release. The wording of the test will ensure that public protection is at the heart of release decisions made by the Parole Board.
78. Setting out the test's criteria will improve understanding and remove ambiguity about what the test means in practice. One criterion in this list refers to submissions made by victims – this will include Victims Personal Statements and any other submissions victims make to the Board, such as the requests for specific licence conditions. This will ensure the impact on victims is taken into account as part of the Parole Board's assessment of a prisoner.
79. The release of prisoners on parole who have committed the most serious offences can give rise to significant public concern which undermines the confidence in the criminal justice system. Application of the ministerial oversight of parole decisions to prevent a release where there are any doubts that the release test has been met will provide reassurance that no offender is being released without thorough scrutiny of the decision, and may lead to a reduction in serious further offences.
80. The requirement to increase the number of Parole Board members with law enforcement background will increase the overall breadth of knowledge and experience across the whole membership. Ensuring members from this cohort sit on top-tier will also increase victim and public confidence in the system because it will demonstrate that the members charged with making decision about release have a range of different backgrounds and experience.

F. Risks, assumptions and sensitivity analysis

Assumptions & Risks

81. The above impact estimates are based on assumptions. The main assumptions used and the associated risks are described in table 2 below.

Table 2: Main Assumptions & Risks

| Assumptions | Risks / uncertainties |
|--|--|
| The measures will come into effect in Spring 2024, and for the purposes of this IA this has been assumed to be April 2024. | Any delay in the implementation of the measures will delay impacts by an equivalent amount of time. |
| Future top-tier hearing volumes are based on a five-year average of volumes between 2016/17 and 2020/21. | Future cases in scope for these changes are uncertain. If there are significant changes to offences being committed, sentencing behaviour, |

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| | <p>or cases becoming eligible for review this would have a significant impact on all costs and benefits that have been considered. Any further increases on demand on the Parole Board and PPCS could have a negative impact on performance and cost unless it is adequately resourced.</p> |
| <p>It is assumed that the maximum oral hearing capacity for top-tier cases will be 3,000 cases per annum from 2024/25 onwards.</p> | <p>If the Parole Board's capacity to hear top-tier oral hearings decreases, due to lower member availability or a longer average time taken per case, it would cause a growing backlog which would then increase the demand on prison places while offenders have to wait for their hearing.</p> <p>If the planned maximum capacity from 2024/25 onwards is insufficient to meet expected demand in the high scenario and if this scenario were to be realised it would cause an indefinite increase in Parole Board and prison demand, if mitigation steps were not taken.</p> <p>Recent changes have been made to the Parole Board Rules, including the option of public hearings and the absence of written recommendations from HMPSS witnesses. If those measures prove more difficult to implement or manage than expected then it could impact on the Parole Board's capacity to meet demand if hearings become longer or more complex.</p> |
| <p>The release rate of top-tier offenders is assumed to fall by 4 percent in the best estimate and by 8 percent in the high scenario. It is assumed to be unaffected in the low scenario.</p> | <p>The impact of the statutory release test on Parole Board outcomes is uncertain and if release rates were to fall further it would increase demand on prison places and Parole Board hearings.</p> |
| <p>It is assumed that 20% of Parole Board decisions to release top-tier offenders will be refused by ministers. A broad range is captured around this in the high and low scenarios to account for the high degree of uncertainty.</p> | <p>If ministers use the new power of refusal in fewer cases, then prison place impacts and costs will be significantly lower. Similarly, if the power is used in more cases then prison place impacts and costs will be significantly higher.</p> |
| <p>It is assumed that 50% of appeals to the Upper Tribunal following a refusal by ministers will be successful. A very broad range is used here in the low and high scenarios to account for the very high degree of uncertainty.</p> | <p>If a higher percentage of appeals to the Upper Tribunal are successful, then prison place impacts and costs will be significantly lower. Similarly, if a lower percentage of appeals are successful then prison place impacts and costs will be higher.</p> |
| <p>It is assumed that offenders will have to wait 17 months between successive oral hearings in the best estimate, and 15/19 months in the low/high scenarios, respectively. Upper Tribunal appeals are assumed to take between 1-3 months across the scenarios.</p> | <p>Parole Board hearing delays and Upper Tribunal appeal delays would serve to increase the amount of time offenders spend in custody, and therefore number of additional prison places required.</p> |
| <p>This IA only assesses the impact of changes on top-tier offenders. Release rates and Parole Board decision making for non-top-tier cases are therefore assumed to be unaffected.</p> | <p>There is a risk that the statutory release test may impact release rates for non-top-tier offenders. However, it is difficult to anticipate what effect this is likely to have.</p> |
| <p>Transfer to open conditions (whereby the Parole Board recommends an offender moves from</p> | <p>Additional reconsideration cases may be expected due to the increased volume of cases</p> |

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| <p>closed to open prison conditions) and reconsideration cases (whereby parties are able to apply for parole decisions to be looked at again by the Parole Board through the reconsideration mechanism) for top-tier offenders have not been considered in the modelling.</p> | <p>being reviewed. Increased transfers to open conditions would reduce the prison place running costs estimated, while additional reconsiderations would increase Parole Board costs.</p> |
| <p>The running cost of an average prison place is assumed to be £62,500 (incl. optimism bias). This is based on the published cost per prison place in 2020/21 inflated to current (2023/24) prices and adjusted for optimism bias</p> | <p>Prison unit costs cover the day to day running costs of a prison only, and do not incorporate any capital costs associated with construction, investment and costs associated with any developing or contracted out services or rehabilitative activities these prisoners might undertake while in custody.</p> |
| <p>Additional prison places will need to be constructed in order to meet any increased demand, the construction cost for each place is £352,000 (2023/24 prices). This cost is an average based on the total amount of money allocated to the construction of 10,000 prison places announced in 2019/20, inflated to 2023/24 prices and adjusted for optimism bias. To account for relative price effect observed in the construction sector, costs in each year are inflated using the Building Cost Information Service (BCIS), and deflated using the GDP deflator to calculate real prices. It is assumed that the construction of each place will take place in the same year it is needed.</p> | <p>The exact construction profile will vary depending on when additional capacity is needed. This depends on a range of factors, primarily natural changes to the prison population and future changes that increase or decrease the prison population. Because of this, it is not possible to allocate precise prison places and costs for each additional prison place at this point. Construction costs may rise more sharply than expected, as well as inflation, which would significantly increase capital costs required.</p> |
| <p>The monetised benefit to the probation service is based on an internal cost estimate for offenders on licence and uplifted for optimism bias.</p> | <p>This benefit is based on the saving to the probation service of an offender serving less time on licence.</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> |

Sensitivity Analysis

73. The impacts in this IA have been calculated on the basis of three scenarios. As a result, we have not conducted any separate sensitivity analysis of the main results.

G. Wider Impacts

Equalities

74. A full Equalities Impact Assessment has been published alongside this IA

Better Regulation

75. These proposals are exempt under the Small Business Enterprise and Employment Act 2015 and will not count towards the department's business impact target. Additional public-sector costs will be met by MoJ, HMPPS and the Parole Board for England and Wales.

Impact on small and micro business

76. There are not assumed to be any direct costs or benefits to business for the changes.

Environment

77. The construction of any new prison places required because of the options in this IA will impact the environment negatively. As the construction profile of additional prison places is not yet fully planned out, it is not yet possible to determine the exact environmental impact of the prison places required to meet the additional demand caused by the proposals in this IA.

78. However, any new prisons that HMPPS construct must now comply with a range of environmental legislation including the Climate Change Act which requires the department to reduce our emissions to net zero by 2050. As any new prison buildings will be in operation well beyond 2050 they must be "net zero ready". This will involve reducing their operational energy demand to a minimum from day one and continuing to reduce energy usage throughout the life of the building. Therefore, once constructed, the new prison buildings will have a smaller impact on the environment than existing prison buildings.

Potential trade implications

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

H. Implementation

80. We expect the Bill to achieve Royal Assent in Autumn 2023, allowing us to commence and implement the reforms in Autumn/Winter 2023/2024. Amendments to the Parole Board Rules made via Statutory Instrument will be made after Royal Assent. These will set out the Secretary of State's procedural rules on how the primary legislative changes must be applied and will confer the powers and requirements to the Parole Board, including the requirement for members with a law enforcement background to sit on panels in top-tier cases.

I. Monitoring and evaluation

81. The impact of the reforms will be monitored and evaluated in a number of ways through improved governance of the system. We expect to shortly be implementing the recommendation originally made in the Tailored Review of the Parole Board to create a new 'Parole System Oversight Group' which will be formed of senior staff from across HMPPS, MoJ and Probation. It will be tasked with monitoring performance of the parole system and leading on operational changes.

82. We will also implement recommendations made in previous reviews of the system to create a Rules Committee to advise the Secretary of State on necessary changes, and to introduce a system of third-party scrutiny.
83. The Parole Board will continue to publish its Annual Review and Accounts each year where it reports on its operational and financial performance.