

Title: The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 Impact Assessment (IA) IA No: MoJ063/2023. RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 23/10/2023			
	Stage: Legislation			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: sarah.clutterbuck@justice.gov.uk				

Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred Option

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£98.8m	N/A	N/A	Not a regulatory provision

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

The Government commissioned Clare Wade KC to review sentencing in domestic homicide cases to establish whether current law and sentencing guidelines are fit for purpose and to identify options for reform. The Domestic Homicide Sentencing Review (DHSR) was published in March 2023, accompanied by an interim response from the Government. The Government published its full response in July 2023. This statutory instrument legislates for the following recommendations made by the DHSR:

- Violence which amounts to overkill will be made a statutory aggravating factor for murder.
- A history of controlling or coercive behaviour (CCB) by the perpetrator against the victim will be made a statutory aggravating factor for murder.
- A history of CCB by the victim against the perpetrator will be made a statutory mitigating factor for murder.

Government intervention is required as making the above changes requires secondary legislation.

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

These measures will ensure that, for the first time, domestic homicides are given specialist consideration in our sentencing framework for murder. Until now, there have been no statutory aggravating or mitigating factors within Schedule 21 which recognise the seriousness of the preceding abuse that is so common in domestic cases, nor has overkill been recognised as a statutory aggravating factor. These amendments to Schedule 21 will ensure that the perpetrators in these cases receive sentences which are commensurate with the severity of the crime.

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

The following options are assessed in this Impact Assessment (IA):

- **Option 0** – Do nothing.
- **Option 1** – Implement a statutory instrument to:
 - **Measure 1A:** Make violence which amounts to overkill a statutory aggravating factor.
 - **Measure 1B:** Make a history of controlling or coercive behaviour by the perpetrator against the victim a statutory aggravating factor.
 - **Measure 1C:** Make a history of controlling or coercive behaviour by the victim against the perpetrator a statutory mitigating factor.

The Government's preferred option is Option 1.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A				
Is this measure likely to impact on international trade and investment?			N/A	
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large 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: 19/10/2023

Summary: Analysis & Evidence

Policy Option 1 Measures A, B & C

Description: Measure 1A: Make violence which amounts to overkill a statutory aggravating factor. Measure 1B: Make a history of controlling or coercive behaviour (CCB) by the perpetrator against the victim a statutory aggravating factor. Measure 1C: Make a history of CCB by the victim against the perpetrator a statutory mitigating factor.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Period 40 Years	Net Benefit (Present Value (PV)) (£m)		
			Low: -£53.3m	High: -£132.7m	Best Estimate: -£98.8m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£19.1m	£5.2m	£53.3m
High	£55.1m	£14.0m	£132.7m
Best Estimate	£37.4m	£9.9m	£98.8m

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

The main monetised costs associated with Option 1 will be to HMPPS – Prisons. It is estimated that, in steady state, between 66 to 190 additional prison places will be required to be constructed, at a transition cost of £19.1m to £55.1m to construct, and with an ongoing annual running cost of £4.0m to £11.6m for these places. Due to the existing minimum term (tariff) lengths for murder, this prison place impact is not expected to start to be felt until around 2040, with steady state not being reached until around 2060.

For Measures B and C, it is anticipated that additional court hearing time will be needed to consider additional evidence on CCB for relevant cases, at an estimated annual cost of £1.2m to £2.4m for the LAA.

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

Key non-monetised costs are:

- HMPPS-Prison Service: There is a risk that offenders spending longer in prison may compound prison capacity and overcrowding.
- Families of Offenders: A longer time in custody may strain familial and community links, and ultimately increase the likelihood of reoffending.

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'

It has not been possible to monetise any of the benefits for this option.

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

Option 1, alongside the remaining legislative measure being implemented following the DHSR, will ensure that the seriousness of domestic murders and the particular harms that arise in these cases will be recognised in the sentencing framework for murder. It will also build on the Government's zero tolerance approach to violence against women and girls and ensure that victim's families, and the public, have confidence in the justice system to respond to cases of domestic murder.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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Assumptions on the prevalence of overkill and CCB have been made for intimate partner murders; familial murders and non-domestic murders based on a case file review of intimate partner homicides and expected relative prevalence in other types of murder. A low, best and high estimate are used to reflect the uncertainty in prevalence estimates.

For the purposes of this IA, we have assumed a change in tariff length due to these measures. As sentencing is a matter for the independent judiciary, these assumptions are highly uncertain. Sensitivity analysis has been used to test these assumptions.

BUSINESS ASSESSMENT (Option 1A)

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. In 2021 the Government commissioned an independent expert, Clare Wade KC, to review sentencing in domestic homicide cases to establish whether current law and sentencing guidelines are fit for purpose and to identify options for reform. The Domestic Homicide Sentencing Review (DHSR) was published on 17 March 2023, accompanied by an interim response from the Government. The Government published its full response on 20 July 2023.
2. The Review made 17 recommendations for reform. In the full response, the Government proposed four legislative measures to give domestic homicides specialist consideration in our sentencing framework for murder for the first time. The statutory instrument (SI) which this Impact Assessment (IA) supports will legislate for three of these measures:
 - Violence which amounts to overkill will be made a statutory aggravating factor for murder.
 - A history of controlling or coercive behaviour by the perpetrator against the victim will be made a statutory aggravating factor for murder.
 - A history of controlling or coercive behaviour by the victim against the perpetrator will be made a statutory mitigating factor for murder.
3. This IA explains the policy rationale and objectives for these three measures included in the SI. It then provides an overview of the estimated effect of each of the measures on society, including both the monetised and non-monetised impacts. The estimated impacts of the remaining legislative measure, to make murder which takes place at the end of a relationship a statutory aggravating factor, will be set out in a separate IA once that legislation is brought forward.

Schedule 21

4. The sentencing framework for murder is contained at Schedule 21 to the Sentencing Act 2020.¹ Government intervention via legislation is required to make changes to this framework.
5. Schedule 21 sets out the principles which the court must have regard to when assessing the seriousness of all cases of murder, including domestic murders, to determine the appropriate tariff to be imposed. Schedule 21 contains a range of starting points for determination of the tariff. Based on the circumstances of the offence, the starting points for adult offenders are 15 years, 25 years, 30-years or a whole life order.
6. Offenders who are under 18 when they commit murder face a sliding scale of starting points ranging from 8 to 27 years, depending on the age of the offender when the offence was committed and the seriousness of the offence.
7. Schedule 21 also contains statutory aggravating and mitigating factors to be considered, although this list is not exhaustive.

Controlling or Coercive Behaviour

8. Controlling or coercive behaviour in an intimate or family relationship became a criminal offence on 29 December 2015 as a result of section 76 of the Serious Crime Act 2015. In April 2023, the Home Office published an updated statutory guidance framework for the offence.
9. According to the guidance, controlling or coercive behaviour can comprise economic, emotional or psychological abuse, technology-facilitated domestic abuse, as well as threats, whether they are accompanied or not by physical and sexual violence or abuse. This behaviour does not relate to a single incident. It is a purposeful pattern of behaviour which takes place over time which isolates the

¹ <https://www.legislation.gov.uk/ukpga/2020/17/schedule/21>

victim from support, exploits them, deprives them of independence and regulates their everyday behaviour.

10. Cases of domestic murder are rarely isolated incidents. They are often the culmination of years of abuse; abuse which is often underpinned by coercion and control. In the majority of cases, this abuse has been committed by the perpetrator of the murder against the victim. A minority of cases, however, involve a victim of abuse who has killed their abuser. In most of these cases, the perpetrator of the killing and the victim of the abuse is a woman.
11. The Sentencing Council's Overarching principles: domestic abuse guideline specifically recognises that the domestic context of offending behaviour represents a violation of trust and security, and therefore makes the offending more serious.
12. However, until now there have been no statutory aggravating or mitigating factors within Schedule 21 which recognise the seriousness of the preceding abuse that is so common in domestic cases. Clare Wade KC therefore recommended the addition of a statutory aggravating factor to Schedule 21 for cases where there is a history of controlling or coercive behaviour by the perpetrator against the victim, and a statutory mitigating factor to Schedule 21 for cases where there is a history of controlling or coercive behaviour by the victim against the perpetrator.

Overkill

13. Clare Wade KC uses the term 'overkill' in the Review to refer to the use of excessive or gratuitous violence, beyond that which is necessary to kill. Overkill causes intense distress to the families of victims, knowing that the body of their loved one was violated in such a way.
14. Overkill is prevalent in domestic murders and was identified in over half of the murder cases analysed in the case review (see paragraphs 31-34 below). In all but one of these cases, the perpetrator was male, and in over two-thirds of the cases, the perpetrator had also exhibited behaviour which was controlling or coercive towards the victim.
15. Overkill is not currently recognised in statute as an aggravating factor. Clare Wade KC therefore recommended adding a statutory aggravating factor to Schedule 21 to recognise this harm, which has been defined in the instrument as 'the use of sustained and excessive violence towards the victim'.

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 the markets operate or there are strong enough failures in existing Government interventions 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 certain groups in society).
17. All the measures in this IA have an equity rationale: to ensure the perpetrators of domestic murders receive sentences which are commensurate with the severity of the crime. Their rationale also includes public protection: giving domestic murders specialist consideration in the sentencing framework for the first time will provide greater public protection and increase public confidence in the justice system.
18. The associated policy objective is to update the sentencing framework to better reflect the seriousness of violence and abuse within a domestic context and the abuse of trust involved. The measures introduced by the statutory instrument will ensure that controlling or coercive behaviour and overkill, which are factors specific to or prevalent in domestic murders, are specified as statutory aggravating factors to be considered at sentencing so that offenders serve sentences that reflect the severity of the crime. Additionally, for those who are victims of abuse who kill their abuser, predominantly female perpetrators, this important context will be made a statutory mitigating factor.

C. Affected Stakeholder groups, organisations and sectors

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

- HM Courts and Tribunal Service (HMCTS) of England and Wales
- Legal Aid Agency (LAA) of England and Wales
- Police
- Crown Prosecution Service (CPS) of England and Wales
- HM Prison and Probation Service of England and Wales, which includes both the Prison Service (HMPPS-Prison Service, or just 'prison services') and the National Probation Service (NPS, or just 'probation services')
- Parole Board
- Families of victims
- Offenders and their families
- The public

D. Description of options considered

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 for murder.
- **Option 1** – Implement a statutory instrument to:
 - **Measure 1A:** Make violence which amounts to overkill a statutory aggravating factor.
 - **Measure 1B:** Make a history of controlling or coercive behaviour by the perpetrator against the victim a statutory aggravating factor.
 - **Measure 1C:** Make a history of controlling or coercive behaviour by the victim against the perpetrator a statutory mitigating factor.

Option 0

21. Under this option, no changes would be made to the current sentencing framework for murder to reflect the seriousness of domestic homicide. As a result, the problems identified above would remain. Therefore, this option has been rejected as it would not address the policy objectives.

Option 1

22. Implement a statutory instrument to:

- A. Make violence which amounts to overkill a statutory aggravating factor.
- B. Make a history of controlling or coercive behaviour by the perpetrator against the victim a statutory aggravating factor.
- C. Make a history of controlling or coercive behaviour by the victim against the perpetrator a statutory mitigating factor.

23. Option 1 A to C is the preferred option as it best meets the policy objectives.

E. Cost and Benefit Analysis

24. This overarching IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.²
25. 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.
26. IAs place a strong focus on the 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 monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
27. All the cost estimates in this IA have been assessed using HM Treasury guidance. To make our estimates for each measure comparable, we have adopted the following conventions:
- Monetised costs and benefits are stated in current, that is 2023/24, prices.
 - The Net Present Value (NPV) of each measure has been calculated for a forty-year period starting in 2024-25. A discount rate of 3.5 per cent has been applied; and then a 3 per cent discount rate for impacts beyond 30-years' time.
 - Costs are rounded to the nearest hundred thousand.
 - Where appropriate, 20% optimism bias has been applied to future 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).
28. All the costs and benefits below are estimates, based on a range of assumptions set out in Table 4 (see section F below). It is very difficult to estimate accurately over a 40-year timeframe. This means all costs and benefits are subject to change as the impact gets closer to delivery. This is particularly the case for costs of construction and operating a prison place. There may also be feasibility concerns in meeting the increased demand through new supply.
29. As is the case in all MoJ IAs, the direct impact on offenders of changes to the sentencing framework are not included. However, it is possible that changes in sentencing may have impacts on the offender after release or on their families and other dependents.

Data & Methods

Data Sources

30. The following are the main sources of data and evidence used to inform this IA.
31. **A case file review of intimate partner domestic homicide sentencing remarks.** The sentencing remarks of a sample of 120 cases of domestic homicide between 2018 and 2020 where the victim was a partner or ex-partner of the offender were analysed to inform the Domestic Homicide Sentencing Review (summarised at Appendix D of the report).³ This included collating data on the offence sentenced for, tariff length, aggravating and mitigating factors, use of a weapon, as well as factors particularly relevant to the DHSR and this IA: controlling or coercive behaviour and overkill.
32. The data collated from the case file review is not routinely centrally available. Domestic homicides are recorded as murder or manslaughter offences in court data and MoJ sentencing statistics,

² [The Green Book \(2022\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/102442/gb2022.pdf)

³ [Appendix D, Domestic Homicide Sentencing Review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/102442/gb2022.pdf)

therefore it is not possible to identify domestic homicides as a subset. Data on aggravating and mitigating factors is not routinely collected for any offence.

33. This case file review has therefore been instrumental in informing the impacts and analysis in this IA, including further analysis for this IA and the accompanying equalities statement. However, there are key limitations to note with the data collated from the case file review:
- There is no guarantee that every relevant case from the period reviewed has been identified, though this was the intention. Comparing the numbers included in the case file review to published homicide statistics suggests the case file is an undercount.
 - Sentencing remarks are, by their nature, a summary of how the sentence was reached and are not a full representation of the case. As such, findings are limited to what has specifically been mentioned in the remarks.
 - Controlling or coercive behaviour is often overlooked and under reported. Therefore, the prevalence estimates may be an underestimate.
34. For these reasons, the findings from the sentencing remarks analysis are considered indicative and, in some areas, such as the identification of overkill, there will have been an element of subjective interpretation.
35. **Homicides in England and Wales statistics.** Statistics on homicides based on extracts from the Home Office Homicide Index (HOHI) are published by the ONS.⁴ The HOHI contains detailed record-level information about each homicide recorded by police in England and Wales. Whilst a robust source of data, the ONS figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.
36. As the case file sample did not include all intimate partner homicides in the period (despite our intention and best efforts to do so), these published homicides statistics were used to calculate the average number of intimate partner domestic homicides, as well as the number of familial domestic homicides and non-domestic homicides in the last five years (from the start of April 2017 to the end of March 2022, see assumption in Table 4).
37. **‘Domestic Homicides and Suspected Victim Suicides During the Covid-19 Pandemic 2020-2021’.**⁵ This report, published by the Home Office, Vulnerability Knowledge and Practice Programme, and the National Police Chiefs Council and College of Policing, looked at domestic abuse related deaths⁶ that occurred between March 23rd 2020 and 31st March 2021.
38. Findings included data on the prevalence of suspects known to the police for controlling or coercive behaviour in intimate partner homicides (30%) and adult family homicides (14%) which has been used to inform assumptions for familial domestic murders. The project was reliant on police records to identify domestic abuse related deaths, although this limitation is most relevant to suspected victim suicide data which has not informed this IA.

Methods

39. The case file review of intimate partner domestic homicide cases was used to inform estimates on the prevalence of overkill, controlling or coercive behaviour by the perpetrator against the victim and controlling or coercive behaviour by the victim against the perpetrator. Assumptions on the relative prevalence of these factors in familial domestic murders were based on published findings on the prevalence of controlling or coercive behaviour in each of these types of homicide (see paragraphs 37-38).
40. In the absence of data, assumptions on the prevalence of overkill in non-domestic murder cases were based on an assumed relative prevalence to that for familial domestic homicides. As controlling or coercive behaviour will only apply where there is an intimate personal relationship, it was assumed

⁴ [Homicide in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

⁵ [Domestic Homicides and Suspected Victim Suicides During the Covid-19 Pandemic 2020-2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁶ Defined as domestic murder by a (current or ex) partner, family member or co-habitee, as well as child deaths in a domestic setting, unexplained or suspicious deaths, and suspected suicides of individuals with a known history of domestic abuse victimisation.

Option 1B-C would not apply to non-domestic murder cases. Given the uncertainty around these assumptions, the assumed prevalence of these factors was varied to provide a low, best and high estimate (see Table 4).

41. As set out in Table 4, for the purposes of this IA, assumptions were also made on the impact that option 1A-C would have on tariff length for murder. For each aggravating factor, it was assumed that the tariff would increase and for the mitigating factor that it would decrease. A maximum average impact of 2 years for each factor was assumed (additional for each of the aggravating factors and a reduction for the mitigating factor).
42. Based on patterns identified in the case file review, the assumed impact on tariff length was varied by the minimum term starting point (for example, a greater impact was assumed for cases with a 15-year starting point than for cases with a 25-year starting point) and whether it was considered to have already been considered as an aggravating factor in sentencing (a smaller impact was assumed where a factor seemed to have already been considered as an aggravating factor). Sentencing in individual cases is a matter for the independent judiciary and it is not possible to identify the impact of individual aggravating or mitigating factors in sentencing decisions. As these assumptions are highly uncertain, the impacts in this IA have been tested using sensitivity analysis (see paragraph 63 below).
43. Whilst changes to the sentencing framework for murder will equally apply to under-18s, the length of existing minimum terms for life sentences means that costs and impacts from this measure will only apply to the adult prison estate.
44. See Table 4 for further detail on the assumptions used in these impact estimates.

Option 1 – Implement a statutory instrument to:

- **Measure 1A:** Make violence which amounts to overkill a statutory aggravating factor.
- **Measure 1B:** Make a history of controlling or coercive behaviour by the perpetrator against the victim a statutory aggravating factor.
- **Measure 1C:** Make a history of controlling or coercive behaviour by the victim against the perpetrator a statutory mitigating factor.

Costs of Option 1

Monetised costs

HMPPS – Prisons

45. Measure A and B are expected to increase the tariff length for relevant murder cases and are therefore expected to have prison place impacts. Measure C is expected to decrease the tariff length for relevant murder cases and therefore reduce the overall prison impact of Option 1. Table 1, below, sets out the expected impact on prison places for each measure which forms part of Option 1.

Table 1: Estimated prison place impact at steady state, by Measure

	Low	Best	High
Measure A	41	82	112
Measure B	28	52	89
Measure C	-3	-5	-11
TOTAL for Option 1	66	129	190

46. As shown in Table 1, Option 1 is expected to have a steady state impact of between 66 to 190 additional adult prison places. The costs associated with the construction of these additional prison places are estimated to cost £19.1m to £55.1m, with an ongoing annual running cost of £4.0m to £11.6m once they all are in use.
47. Due to the existing tariff lengths given for murder, the impact from Option 1 is not expected to start to be felt until around 2040, with steady state not being reached until around 2060, although there may be negligible additional costs beyond that for any cases with either an exceptionally high tariff or time spent in prison post-tariff.
48. To cover the estimated impact of this measure, we have produced a 40-year NPC, which ranges from £28.8m to £82.6m for HMPPS - prisons, with a best estimate of £56.6m.

Police

49. For Measure A, due to the nature of overkill, we do not anticipate this new aggravating factor to require additional investigation by the police.
50. For Measures B and C, it is expected that this option will increase police investigation costs as officers will use more resources to explore the possibility of controlling or coercive behaviour as a factor in domestic homicides. Whilst it is not possible to estimate the additional length of time and resource officers will spend on investigating controlling or coercive behaviour, it is expected that the cost implication will be relatively minimal.

CPS, HMCTS and LAA

51. For Measure A, we anticipate that there may be initial minimal resource impacts for the CPS, HMCTS and LAA, as courts determine the parameters of the new statutory aggravating factor.
52. For Measures B and C, due to the potential increase in the preparation and presentation of evidence at court and the associated advocacy required, this option will have resource implications for the CPS in terms of their cost per case. Whilst it is not possible at this point to estimate this cost, it is expected to be relatively minimal.
53. It is assumed that additional sitting days may be required for additional evidence for Measures B and C to be presented in relevant cases. This will not have a financial impact for HMCTS (as it will not alter court capacity), however there may be an impact on disposal rates, though it is not possible to quantify these due to variation in the prioritisation of cases.
54. The assumption was made, set out in Table 4, that an additional 3 sitting days, on average, may be required as a result of the increase in the presentation of evidence related to controlling or coercive behaviour (Measures B and C). Assumptions on the proportion of cases this would apply to are also set out in Table 4 and include an assumption that for the low, best and high estimates, more cases will have additional evidence presented than the aggravating factor will apply to, due to the evidential burden to establish this.
55. Estimated LAA crown court costs per sitting day (£7,500) have been derived from published data⁷⁸ from 2019/20, the most recent year that is assumed to be representative of costs per sitting day at steady state and increased due to fee increases since then.⁹¹⁰ Measures B and C have an estimated annual cost of £1.2m to £2.4m. The 40-year NPC for extra legal aid costs associated with these measures is estimated to be £24.5m to £50.2m.

Parole Board and Probation Service

⁷ Costs per day taken from [gov.uk/government/statistical-data-sets/hmcts-management-information-may-2023](https://www.gov.uk/government/statistical-data-sets/hmcts-management-information-may-2023)

⁸ LGFS and AGFS figures used taken from [gov.uk/government/statistics/legal-aid-statistics-january-to-march-2023](https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2023)

⁹LGFS: 4% uplift from para 102 in the [Impact Assessment template \(justice.gov.uk\)](https://www.justice.gov.uk/impact-assessment-template)

¹⁰ AGFS: 17% uplift (based on barristers' fee income uplift) from Table 3 in page 13 in [The Criminal Legal Aid \(Remuneration\) \(Amendment\) \(No. 2\) Regulations 2023 \(revoked\) - Impact Assessment \(legislation.gov.uk\)](https://www.legislation.gov.uk/uklii/2023/13)

56. As murder carries a mandatory life sentence, all cases (except those given a Whole Life Order) are already subject to Parole Board release and supervision on release (if granted) by the Probation Service. Therefore, no additional costs are expected for these organisations.

Non-monetised costs

57. Option 1 may create the following non-monetised costs:

- HMPPS-Prison Service: There is a risk that offenders spending longer in prison as a result of these measures may compound prison capacity and overcrowding (if there is not enough prison capacity), which may also reduce access to rehabilitative resources and potentially increase prison instability, self-harm and violence.
- Families of Offenders: A longer time in custody may strain familial and community links, limit offender motivation for reengagement in rehabilitation, and ultimately increase the likelihood of reoffending.

Benefits of Option 1

Monetised benefits

58. It has not been possible to quantify any of the benefits expected from measures A, B or C.

Non-monetised benefits

The Public, Families of Victims

59. These three measures, alongside the remaining legislative measure being implemented following Clare Wade KC's Domestic Homicide Sentencing Review, will ensure that the seriousness of domestic murders and the particular harms that arise in these cases will be recognised in the sentencing framework for murder. This should increase both public protection and public confidence in the justice system.

60. This option will ensure that the horror of overkill and the anguish it causes the families of victims will be recognised in statute. It will also build on the Government's zero tolerance approach to violence against women and girls and ensure that victim's families, and the public, have confidence in the justice system to respond to cases of domestic murder.

Option 1 Summary

61. Table 2 provides the estimated NPV for each of the measures using the low, best and high estimate approaches described in table 4. Table 3 adds to this by providing further information about how the impacts of Option 1 divide between the transition and on-going costs of each measure.

Table 2: 40-year NPV for each measure by low, best and high estimate*

Measure	40-year NPV		
	Low estimate	Best estimate	High estimate
A: Overkill aggravating factor	-£18.7m	-£37.6m	-£51.4m
B: Controlling or coercive behaviour aggravating factor	-£35.5m	-£62.5m	-£84.9m
C: Controlling or coercive behaviour mitigating factor	£0.9m	£1.3m	£3.6m
TOTAL for Option 1	-£53.3m	-£98.8m	-£132.7m

*Figures may not sum due to rounding.

Table 3: Summary of transition, annual and 40-year NPV for Option 1, by estimate

Estimate	Transition	Annual	40-year NPV
Low	-£19.1m	-£5.2m	-£53.3m
Best	-£37.4m	-£9.9m	-£98.8m
High	-£55.1m	-£14.0m	-£132.7m

F. Risks and assumptions

62. The above impacts have been estimated on the basis of a number of assumptions. As each of these assumptions are associated with some degree of uncertainty, there are risks associated with each estimate. Table 4 below sets out the main assumptions and the associated risks and uncertainties.

Table 4: Main assumptions, risk and uncertainties

	Main assumptions	Risks/uncertainties
Implementation date	Legislation will come into effect in 2024. As these options will only apply to offences committed after the implementation date of the legislation, these options are assumed to start to be reflected in sentences given from 2025 due to the time lag between committal of an offence and date of sentence.	Any delay to the implementation of the options or when impacts begin to be felt will delay the impacts by an equal amount of time.
Prison estate place costs	<p>Additional adult prison places will need to be constructed to meet any additional prison demand. It is assumed that the construction of each adult prison place will take place in the two years before it is needed, and the costs will fall over this same period.</p> <p>Due to when impacts will be felt, all impact applies to the adult prison estate even for those sentenced whilst aged under 18 as this cohort will transfer to the adult estate at age 18.</p> <p>The construction cost of an additional prison place is £290,000. This is an indicative cost based on the publicly announced funding of £2.5bn for 10k prison places in 2019 with inflation applied, although given the scale of the expansion and current high levels of inflation this is likely to be a low estimate.</p> <p>The average running cost of a prison place is £51,000 per year (2023/24 prices), based on the published figure of £46,696 (2021/22 prices and we have assumed that prison costs will continue to rise in line with inflation).</p>	<p>The adult prison place construction cost is an average based on the total amount of money allocated to the construction of 10,000 additional prison places over a 10-year period and inflated to 2023/24 prices. The exact construction profile will vary depending on when additional prison capacity is needed. This depends on a range of factors, primarily natural changes in the prison population and future policy 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 place at this point.</p> <p>Prison estate 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>Optimism bias of 20% has been applied to future prison running costs.</p> <p>Net present value has been calculated by applying a 3.5% discount rate for each future year (3% for impacts after the 30-year point). The gross domestic product (GDP) deflator has been used.</p> <p>These options are only expected to impact tariff length, with no impact to time spent in prison post-tariff. Based on published data on the median time served in prison prior to first release from a mandatory life sentence¹¹ and internal MI, an assumption of a median extra 3 years spent in prison post-tariff prior to release is assumed in this IA.</p>	<p>Release is a matter for the Parole Board. As such, the median time spent in prison post-tariff is highly uncertain and some prisoners may not be released. Time spent in prison post-tariff impacts on the modelling of flows in and out of prison and therefore the year impacts occur in.</p>
<p>Measure A: Prevalence of overkill</p>	<p>The DHSR case file review sample is assumed to be representative of intimate partner (IP) domestic homicides and has been used to inform the following assumptions on the prevalence of overkill in murder cases.</p> <p>For this IA, we have assumed the prevalence of these factors in each estimate will remain constant in future years.</p> <p>A low, best and high estimate was produced based on varying the prevalence of overkill in murder cases. For overkill, the best and high estimate used the same prevalence for intimate partner and familial domestic murders, but varied the prevalence assumed in non-domestic murders.</p> <p><u>IP domestic murders:</u></p> <p>Low estimate The prevalence of overkill is assumed to be 43% based on the proportion in the case file review where a sustained attack or prolonged mental/physical suffering (used as a proxy for overkill) had been considered an aggravating factor in sentencing.</p> <p>Best and high estimate As making overkill a statutory aggravating factor is expected to ensure it is always considered as an aggravating factor in sentencing,</p>	<p>Given the limitations of the intimate partner domestic homicide case file data (see paragraphs 31 to 34), and lack of equivalent evidence or data on overkill in familial domestic homicides and non-domestic homicides, these assumptions are highly uncertain. This uncertainty around prevalence is reflected in the low, best and high estimates.</p> <p>It is difficult to predict future changes in the types of offences being committed and prevalence of certain characteristics. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p>

¹¹ Prison releases: 2022, [Offender Management Statistics quarterly: October to December 2022](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly) - GOV.UK (www.gov.uk)

	<p>the prevalence of overkill is assumed to be 60% for the best and high estimate. This is based on the proportion of cases in the case file review where overkill was identified (irrespective of whether or not a sustained attack or prolonged mental/physical suffering was specified as an aggravating factor). Given that overkill is identifiable from the circumstances of the case, this prevalence was also assumed for the high estimate.</p> <p><u>Familial domestic murders</u></p> <p>Low, best and high estimate Based on research on the prevalence of controlling or coercive behaviour in cases of domestic homicide (see paragraphs 37-38) it was assumed that overkill would similarly be half as prevalent as for intimate partner murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders</u></p> <p>In the absence of data, assumptions were based on assumed relative prevalence of overkill to familial domestic murder cases.</p> <p>Low estimate It was assumed that prevalence of overkill would be minimal and round to 0% for non-domestic murders.</p> <p>Best estimate A prevalence of 8% was assumed for overkill in non-domestic cases.</p> <p>High estimate It was assumed that 15% of non-domestic murders would involve overkill for the high estimate.</p>	
<p>Measure B: Prevalence of controlling or coercive behaviour by the perpetrator against the victim</p>	<p>The DHSR case file review sample is assumed to be representative of intimate partner (IP) domestic homicides and has been used to inform the following assumptions on the prevalence of controlling or coercive behaviour (CCB) by the perpetrator against the victim in murder cases.</p> <p>For this IA, we have assumed the prevalence of these factors in each</p>	<p>Given the limitations of the case file data (see paragraphs 31 to 34), these assumptions are highly uncertain.</p> <p>CCB is underreported and overlooked. However, making CCB a statutory aggravating factor may increase the likelihood of it being identified and considered in sentencing. This uncertainty around prevalence is reflected in low, best and high estimates.</p>

	<p>estimate will remain constant in future years.</p> <p><u>IP domestic murders</u></p> <p>Low estimate The low estimate assumed the prevalence of CCB by the perpetrator against the victim to be 27% in IP domestic murders. This was based on the prevalence in the case file review where a history of CCB by the perpetrator against the victim was identified and had been considered as an aggravating factor in sentencing.</p> <p>Best estimate We anticipate that making a history of CCB against the victim a statutory aggravating factor will increase identification of CCB. Therefore the best estimate assumed that the prevalence of CCB by the perpetrator against the victim is 51%. This was based on the proportion of cases in the case file review where this was identified, irrespective of whether or not it had been considered as an aggravating factor in sentencing.</p> <p>High estimate CCB is under-reported and often overlooked. Therefore the high estimate assumed a prevalence of 87%, based on the proportion of cases in the case file review that included any of the following factors: a history of CCB, the end of the relationship, overkill, or strangulation. In the DHSR, Clare Wade KC considers all these factors to be linked to CCB.</p> <p><u>Familial domestic murders</u></p> <p>Low, best and high estimate Based on recent research (see paragraphs 37-38), it was assumed for each estimate (low, best and high) that CCB will be half as prevalent as for intimate partner murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders</u></p> <p>Low, best and high estimate As the CCB aggravating factor will only apply in cases where there was an intimate personal</p>	<p>It is difficult to predict future changes in the types of offences being committed and prevalence of certain characteristics. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p>
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	<p>relationship between the perpetrator and victim, it is assumed that the prevalence of CCB will be 0 for non-domestic murder cases.</p>	
<p>Measure C: Prevalence of controlling or coercive behaviour by the victim against the perpetrator</p>	<p>The DHSR case file review sample is assumed to be representative of intimate partner (IP) domestic homicides and has been used to inform the following assumptions on the prevalence of CCB by the victim against the perpetrator in murder cases.</p> <p>For this IA, we have assumed the prevalence of these factors in each estimate will remain constant in future years.</p> <p><u>IP domestic murders:</u></p> <p>Best estimate It was assumed that the prevalence of CCB by the victim against the perpetrator is 2%, based on the proportion of cases in the case file review where a history of domestic abuse by the victim against the perpetrator was identified. Whilst domestic abuse is broader than, and may not always involve CCB, making CCB a statutory mitigating factor may increase its identification, therefore this provided the best estimate of prevalence.</p> <p>Low estimate The low estimate assumed the prevalence to be 1% - half that in the best estimate.</p> <p>High estimate The high estimate assumed the prevalence to be 4% - double that in the best estimate.</p> <p><u>Familial domestic murders</u></p> <p>Low, best and high estimate Based on recent research (see paragraphs 37-38), it was assumed for each estimate (low, best and high) that CCB will be half as prevalent as for intimate partner murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders</u></p> <p>Low, best and high estimate</p>	<p>Given the limitations of the case file data (see paragraphs 31 to 34), these assumptions are highly uncertain.</p> <p>CCB is underreported and overlooked. However, making CCB a statutory mitigating factor may increase the likelihood of it being identified and considered in sentencing. This uncertainty around prevalence is reflected in low, best and high estimates.</p> <p>It is difficult to predict future changes in the types of offences being committed and prevalence of certain characteristics. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p>

	<p>As the CCB mitigating factor will only apply in cases where there was in intimate personal relationship between the perpetrator and victim, it is assumed that the prevalence of CCB will be 0 for non-domestic murder cases.</p>	
<p>Annual homicides and type</p>	<p>As the case review sample did not include all intimate partner homicides in the period (despite best efforts to do so), we have used the last five years of published homicide statistics (see paragraphs 35 to 36) to calculate the average number of intimate partner domestic homicides, as well as the number of familial domestic homicides and non-domestic homicides.</p> <p><i>Figures are rounded to the nearest whole number in the text below and therefore may not add.</i></p> <p>Based on a five-year average, it is assumed for this IA that per annum there are:</p> <ul style="list-style-type: none"> • 150 domestic homicides • 80 domestic homicides by an intimate partner, all with victims aged 16 or over • 70 familial domestic homicides, 44 with a victim aged 16+. <p>Whilst homicide data may be updated as cases progress, it is assumed that these statistics provide accurate representation of the relative prevalence of intimate partner domestic homicides, familial domestic homicides and non-domestic homicides.</p> <p>As published statistics include homicides that will be sentenced as murder and manslaughter, the relative prevalence is assumed to reflect the split seen in offence type in the DHSR case file review. Based on the case file review, it is assumed that 74% of these will result in a sentence of murder and 26% a manslaughter sentence.</p> <p>For this IA, we have assumed that this will remain constant in future years.</p>	<p>It is difficult to predict future changes in the types of offences being committed. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p> <p>The relative prevalence of sentences for murder and manslaughter is based on IP domestic homicides. This may not be representative of familial domestic homicides or non-domestic homicides. If there are significant differences in these ratios, this will affect the estimates in this IA.</p>
<p>Changes to tariff/sentence lengths</p>	<p>This SI amends Schedule 21 of the Sentencing Act 2020, which applies only applies to murder, not manslaughter. Therefore, the</p>	<p>Sentencing is a matter for the independent judiciary based on all the circumstances of a case including any aggravating or</p>

	<p>impact estimates only apply to murder.</p> <p>Current sentencing practice was based on the tariff lengths given to relevant cases in the case file review.</p> <p>For the purposes of estimating the impact of the measures being taken forward, it has been necessary to make assumptions on the average impact to the tariff length as a result of the individual measures being taken forward.</p> <p>Measures A and B (aggravating factors)</p> <p>For this IA, we assumed overkill and CCB being made statutory aggravating factors would each have the following impact on sentencing practice.</p> <p><u>Cases where these factors (or their proxies) had already been considered as an aggravating factor in sentencing:</u></p> <p>It was assumed that there would still be some impact for these cases. Specifically:</p> <ul style="list-style-type: none"> • An additional 1-year added to tariff for cases with a 12-year or 15-year starting point. • An additional 0.5 years given to relevant cases with a 25-year or 30-year starting point. • No impact to cases meeting a whole life order starting point. <p><u>Cases where these factors (or their proxies) had not been specified as being considered as an aggravating factor in sentencing:</u></p> <p>It was assumed that there would be a bigger impact for these cases. Specifically:</p> <ul style="list-style-type: none"> • An additional 2-years added to tariff for cases with a 12-year or 15-year starting point. • An additional 1 year given to relevant cases with a 25-year or 30-year starting point. 	<p>mitigating factors. As such, it is not possible to identify the impact of individual aggravating or mitigating factors.</p> <p>These assumptions are therefore highly uncertain as they are dependent on sentencer behaviour and the circumstances of future individual cases. Therefore, sensitivity analysis has been conducted to model impact if changes to tariff lengths is greater than assumed (see paragraph 63).</p>
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	<ul style="list-style-type: none"> No impact to cases meeting a whole life order starting point. <p>Measure C (mitigating factor)</p> <p>For this IA, we assumed a history of CCB by the victim against the perpetrator being made a statutory mitigating factor would have the following impact on sentencing practice:</p> <ul style="list-style-type: none"> A 2-year reduction in tariff length for cases with a 12-year or 15-year starting point. A 1-year reduction in tariff length for relevant cases with a 25-year or 30-year starting point. No impact to cases meeting a whole life order starting point. <p>Where cases involved more than one of the factors above, impacts for each measure were assumed to be independent of each other.</p>	
Police	<p>Measure A</p> <p>Due to the nature of overkill, it is assumed that there will be no additional resource/costs for police for this option.</p> <p>Measures B and C</p> <p>It is assumed that this measure will increase police investigation costs as officers will use more resources to explore the possibility of CCB as a factor in domestic homicides. Whilst it is not possible to estimate the additional length of time and resource officers will spend on investigating CCB, it is expected that the cost implication will be relatively minimal.</p>	It is difficult to estimate the impact this measure will have on police investigation costs. Any impacts that differ from these assumptions may affect estimates modelled.
CPS	<p>Measure A</p> <p>Due to the nature of overkill, it is assumed that there will be no increase in the preparation and presentation of evidence. However, there may be some cases where additional court time is required initially, to determine the parameters of the new aggravating factor. It is expected that the cost implication of this will be minimal.</p> <p>Measures B and C</p> <p>It is assumed this option will have resource implications for the CPS in terms of their cost per case, due to potential increase in the preparation and presentation of evidence at</p>	It is difficult to estimate the impact this measure will have on CPS costs. Any impacts that differ from these assumptions may affect estimates modelled.

	<p>court and the associated advocacy required. Whilst it is not possible to estimate this cost it is expected to be relatively minimal.</p>	
HMCTS	<p>Measure A Due to the nature of overkill, it is assumed that there will be no increase in the preparation and presentation of evidence. However, there may be some cases where additional court time is required initially, to determine the parameters of the new aggravating factor. It is expected that the cost implication of this will be minimal.</p> <p>Measures B and C It is assumed that additional sitting days may be required to present additional evidence on a history of CCB (by the perpetrator or against the perpetrator). This will not have a financial impact for HMCTS (as it will not alter court capacity), however there may be an impact on disposal rates, though it is not possible to quantify these due to the complexities of predicting how cases may be prioritised.</p>	<p>It is difficult to estimate the impact these options will have on court hearing times and the potential knock-on impacts this may have.</p>
Legal Aid Agency (LAA)	<p>Measure A Due to the nature of overkill, it is assumed that there will be no increase in the preparation and presentation of evidence. However, there may be some cases where additional court time is required initially, to determine the parameters of the new aggravating factor. It is expected that the cost implication of this will be minimal.</p> <p>Measure B It is assumed that there will be additional costs to the LAA due to an increase in the presentation of evidence related to CCB. It is assumed that, on average, an additional 3 sitting days may be required. It is assumed that there will be cases where additional CCB evidence will be presented but will not be considered as an aggravating factor in sentencing, due to the evidential burden not being met in every case in which additional evidence is presented. Therefore, for the purposes of this IA, we have assumed for each estimate that LAA costs apply to a greater proportion of cases than in which CCB is considered as an aggravating factor.</p> <p><u>IP domestic murders</u></p>	<p>It is difficult to estimate the impact these options will have on court hearing times and therefore LAA costs. Any impacts that differ from these assumptions may affect estimates modelled.</p>

	<p>Low estimate: 51% of cases have LAA costs based on the proportion of murder cases assumed to have CCB as an aggravating factor in the best estimate.</p> <p>Best estimate: 87% of cases have LAA costs based on the proportion of murder cases assumed to have CCB as an aggravating factor in the high estimate.</p> <p>High estimate: all cases have LAA costs to capture a higher proportion than have CCB as an aggravating factor.</p> <p><u>Familial domestic murders:</u> As above, it was assumed for each estimate (low, best and high) that cases with LAA costs will be half as prevalent as for intimate partner murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders:</u> As above, no impact on these cases was assumed.</p> <p>Measure C A similar approach was applied for CCB as a mitigating factor.</p> <p><u>IP domestic murders</u></p> <p>Low estimate: 2% of cases have LAA costs based on the proportion of murder cases assumed to have CCB as a mitigating factor in the best estimate.</p> <p>Best estimate: 4% of cases have LAA costs based on the proportion of murder cases assumed to have CCB as a mitigating factor in the high estimate.</p> <p>High estimate: 8% of cases have LAA costs based on double the proportion of murder cases assumed to have CCB as a mitigating factor in the high estimate.</p> <p><u>Familial domestic murders:</u> As above, it was assumed for each estimate (low, best and high) that cases with LAA costs will be half as prevalent as for intimate partner murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where</p>	
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	<p>the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders:</u> As above, no impact on these cases was assumed.</p> <p>LAA costs Estimated LAA costs per Crown Court sitting day (£7,500) have been derived from published data^{14,15} from 2019/20, the most recent year that is assumed to be representative of costs per sitting day at steady state and increased due to fee increases since then.^{16,17} LAA cost estimates are based on legal aid funding for the Litigator Graduated Fee Scheme and Advocate Graduate Fee Scheme.</p> <p>Optimism bias of 20% has been applied to future prison running costs.</p> <p>Net present value has been calculated by applying a 3.5% discount rate for each future year.</p>	
Wider Criminal Justice System	As murder already receives a mandatory life sentence with a minimum tariff length after which release is subject to the Parole Board, and as offenders are already subject to Probation supervision for life on release, it is assumed that any costs or benefits will be negligible so have not been factored into this analysis.	Any impacts that differ from these assumptions may affect estimates modelled.

Sensitivity Analysis

63. The impact estimates in this IA are based on the assumptions set out in Table 4 above. However, the assumption related to the potential impact on tariff lengths for each measure is highly uncertain as sentencing is a matter for the independent judiciary based on all the circumstances of a case including any aggravating or mitigating factors. To reflect this uncertainty, sensitivity analysis was conducted to illustrate how the NPV would vary should the impact on tariff lengths be double that set out in Table 4 above for each measure.

Table 5: Sensitivity analysis: 40-year NPV should impact on tariff lengths double for each measure*

Measure	40-year NPV
A: Overkill aggravating factor	-£72.0m
B: Controlling or coercive behaviour aggravating factor	-£82.8m

C: Controlling or coercive behaviour mitigating factor	+£6.1m
TOTAL for Option 1	-£148.6m

*Figures may not sum due to rounding.

G. Wider impacts

Equalities

64. We hold the view that none of the measures in the government’s response are likely to be directly discriminatory within the meaning of the Equality Act 2010 as they apply equally to all offenders being sentenced. Please see the separate overarching equalities impact assessment published alongside this IA for further details.

Impact on small and micro businesses

65. There are not assumed to be any direct costs or benefits to business for these measures.

Potential trade implications

66. There are not assumed to be any direct costs or benefits to business for any of the measures.

Better Regulation

67. These proposals are not considered to be qualifying regulatory provisions and are out of scope of the Small Business Enterprise and Employment Act 2015.

H. Monitoring and Evaluation

68. The impact of the changes will be monitored by MoJ or associated agencies.