

Title: The Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020 and The Offender Management Act 2007 (Coronavirus) (Approved Premises) (Amendment) Regulations 2020 IA No: MoJ058/2020 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: Department for Work & Pensions (DWP)	Impact Assessment (IA)			
	Date: 2 June 2020			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: Stephen Bailey: Stephen.Bailey@Justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£8.8m	N/A	N/A	N/A

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

Due to the unprecedented, emergency situation created by COVID-19, it was necessary to implement measures immediately. Unusually, therefore, this Impact Assessment is being published after the policy has been implemented. It reflects the position at the time the Statutory Instruments were brought into force (6 April 2020) and the anticipated potential impacts at that time which necessitated action; but takes account of developments and impacts experienced since then. Prisons were facing a significant challenge to minimise the impact of COVID-19 due to offenders living in close proximity and typically sharing cells. Without action, Public Health England (PHE) expected the infection curve would occur faster in prisons than in the general population and subsequently create earlier demand for hospital intervention¹. PHE advised that action was necessary to avoid thousands of prisoners, including children in custody, becoming infected and overwhelming local NHS services. Given the unpredictable nature of the situation, a range of measures was introduced to provide a variety of tools that could be used to a greater or lesser extent depending on how the outbreak developed. This included the power to release some prisoners and children to create space within prisons which could only be achieved by a change in legislation.

What are the policy objectives and the intended effects?

The policy objective was to have a power to reduce the prison population if needed via an "End of Custody Temporary Release" (ECTR) scheme. This allows for selected low-risk prisoners who are nearing their automatic release date to be released earlier, during the current pandemic. The scheme is part of a package of measures that HM Prison and Probation Service (HMPPS) has put in place for managing the pandemic which balances the need to protect the public and maintain law and order, with protecting the health and safety of those working and detained in prison. The intention was to create room to manage the prison population with a potentially decreased number of staff, allowing more space to shield vulnerable prisoners and new entrants to custody. The Approved Premises amendment ensures that prisoners released under the scheme may be released to approved premises where necessary. There is considerable uncertainty during this period and the full intended effects of the policy will be dependent on how the outbreak affects prisons as well as individual decisions about release and the speed at which offenders can safely be released.

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

- Option 0:** Do nothing.
- Option 1:** Legislate to allow certain defined categories of prisoner to be released on temporary licence, in order to manage the spread of COVID-19 within the prison estate.

The Government chose option 1 as this best meets the need to safely manage the effects of the pandemic in prisons, whilst protecting the public.

Will the policy be reviewed? The power to release is limited in law to the 'Transmission control period', i.e. only so long as the incidence or transmission of COVID-19 constitutes a serious and imminent threat to public health. The release provisions in Prison Rule 5A and YOI Rule 9A will automatically expire on 25th March 2022, when the Coronavirus Act expires.

If applicable, set review date: N/A

Does implementation go beyond minimum EU requirements?	NA			
Is this measure likely to impact on international trade and investment?	NA			
Are any of these organisations in scope?	Micro NA	Small NA	Medium NA	Large NA
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: NA			Non-traded: NA

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 of State: Lucy Frazer Date: 4 June 2020

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881564/PHE-briefing-paper-prisons-covid19.pdf

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to allow certain defined categories of prisoner to be released on temporary licence, in order to manage the spread of COVID-19 within the prison estate.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019/20	PV Base Year 2019/20	Time Period Years 1 year	Net Benefit (Present Value (PV)) (£m)		
			Low: £8.1m	High: £14.8m	Central Estimate: £8.8m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£N/A	£N/A	£8.1m
High	£N/A	£N/A	£15.6m
Central Estimate	£N/A	£N/A	£8.9m

Description and scale of key monetised costs by 'main affected groups', at centre estimate

The volume of prisoners to be released under the provisions remains hugely uncertain, depending on decision making behaviour, speed of release and the duration of the policy. For a central estimate, we have assumed about 500 individuals being released over the course of the policy, including fewer than 10 from youth custody. The low estimate is about 100 releases and the high estimate about 4,000. The main costs associated with the central estimate include:

- **Electronic Monitoring Service:** All adults and children released will receive GPS tagging, estimated at £8.2m to cover the installation, monitoring and removal of the tags.
- **HM Prison and Probation Service (HMPPS):** Accommodation will be provided for eligible adult prisoners with housing needs (approx. 25%) at a cost of about £0.6m. Prison leavers will also receive a subsistence grant top-up costing less than £0.02m.
- **Department for Work and Pensions (DWP):** Releasing prisoners up to 61 days earlier will result in adult offenders being eligible for benefits up to 61 days earlier and therefore for a longer period of time, leading to an estimated cost of up to £0.8m, depending on the number of successful applicants. This is not include in the NPV as it is a government transfer.
- **Local Authorities:** Accommodation will be provided for eligible children with accommodation needs. Costs are likely to vary significantly on a case-by-case basis, though we estimate a cost of around £0.1m.
- **Youth Offending Teams (YOTs):** Community supervision for children who are released under this scheme is estimated to cost less than £0.05m, though these costs are highly uncertain and differ by youth offending team and the specific needs of the child.

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

- **HMPPS:** The potential costs associated with increased adult probation supervision have not been estimated as we believe the impact will be negligible since offenders will be monitored with GPS tags.
- **Police, Courts, Legal Aid Agency:** We have not estimated the potential cost arising from increased incidence of recall because of small volumes along with high uncertainty over how criminal behaviour may change in the COVID-19 context.
- **The Public and Victims:** Releasing prisoners early from the custodial part of their sentence could affect public confidence, including crime victims; however, it has not been possible to monetise this.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£N/A	£N/A	£0
High	£N/A	£N/A	£0.8m
Central Estimate	£N/A	£N/A	£0.1m

Description and scale of key monetised benefits by 'main affected groups', at central estimate

- **HMPPS:** There are expected to be marginal savings due to the reduced population in the adult and youth estate as a result of these releases, estimated to be around £0.4m, though this would be a temporary benefit during the period the policy operates.
- **Government Transfers:** Transfers that maintain the welfare of those released (universal credit and the subsistence grant) are excluded from the NPV.

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

National Health Service (NHS) and the public: The NHS and the public will benefit due to the better use of health resources resulting from slowing the spread of COVID-19 within the prison system. The measure will help prisons and the youth estate to prevent loss of life as they will be able more effectively to create a safer environment for staff and prisoners. those in custody who are within vulnerable groups.

Key assumptions/sensitivities/risks

- 20% 'optimism bias' has been built into all estimated impacts (costs and benefits), as is standard practice.
- As the provisions will only be used for a limited period, no discount rate has been applied.
- Policy only applies to low-risk offenders who are near the automatic release date in their sentence.
- Our central scenario of 500 early releases over the duration of this policy, including fewer than 10 from the youth estate. Low and high scenarios of 100 (with zero youth released) and 4,000 (40 youth) releases have also been modelled.
- Offenders released through this scheme would have otherwise been released on their conditional release date.

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
NA	NA	NA	

Evidence Base

A. Background

1. The outbreak of the coronavirus that causes COVID-19 is a worldwide concern and has spread rapidly. Many countries, like the United Kingdom, have slowed the pace at which the virus is spreading through social distancing, and have built additional hospital capacity to deal with excess demand. As of 4 April 2020, shortly before these Statutory Instruments (SIs) were made, there were around 47,000 confirmed cases in the United Kingdom¹, and of those hospitalised who had tested positive, around 4,000 deaths. At the same time, there were 88 confirmed prisoner cases and 15 staff cases, and there had been two prison officer and two prisoner COVID-19 related deaths².
2. The SIs and the scheme implemented under them – along with other measures introduced by HM Prison and Probation Service (HMPPS) - were necessary to avoid further spread of the pandemic in the prison estate and potentially overwhelming local NHS services. As outbreak outcomes can be worse for closed institutions, Public Health England (PHE) advised that rising numbers of cases could lead to outbreaks occurring at a faster rate in prisons than in the general population^{3,4}. Cell-sharing in adult prisons, custodial estate staffing levels and inmate access to healthcare services presented significant challenges in the prevention and control of communicable diseases⁵.
3. HMPPS took decisive action to ensure adult prisons comply with social distancing rules by providing alternative means for prisoners to keep in touch with their families after cancelling family visits⁶. All non-essential activities in prisons involving groups of people have been stopped. This includes social visits, education, non-essential work, association, communal dining, periods of mass prisoner movement, religious services and access to the gymnasium. Prisoners are being unlocked in small groups to access essential services such as showers. Though prisoners seem to be complying with these new measures, more action could be taken to mitigate escalating risks the longer the regime is restricted, whilst balancing against the need for public protection.
4. There were concerns that social isolation and lockdowns in prison might result in instability and acts of disorder. Prisons in other countries ahead of the UK in their stage of infection observed disruption once social distancing measures in the custodial estate had started. For example, Italy experienced riots across 27 prisons after placing restrictions on visiting rights, leading to 12 deaths. In Brazil, hundreds of prisoners escaped from 4 semi-open prisons following restrictions on visiting rights.
5. On 24 April, PHE issued their “interim assessment of impact of various population management strategies in prisons in response to COVID-19 pandemic in England”⁴, which noted the impact of the falling number of new arrivals to prison from the courts in creating more headroom and the effectiveness of the compartmentalisation approach to combat the spread of infection. There remained, however, a reasonable worst-case scenario in the custodial estate of hundreds of deaths and, in our view, the need for a release mechanism to provide sufficient flexibility to afford headroom where required over the course of the pandemic.
6. The youth estate did not face the same immediate pressures as the adult estate: occupancy rates are around 80% (c.800 children) and each child has their own room. However, the size and configuration of the estate means that sites are especially vulnerable to even small-scale outbreaks of the virus or

¹ Taken from <https://coronavirus.data.gov.uk/archive>, rounded to the nearest 1,000

² <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public#number-of-cases-and-deaths>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842862/Prison_flu_guidance_adults_2019-20.pdf

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881564/PHE-briefing-paper-prisons-covid19.pdf

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/329792/Prevention_of_infection_communicable_disease_control_in_prisons_and_places_of_detention.pdf

⁶ <https://www.gov.uk/government/news/prison-visits-cancelled>

staff absence. Releasing even a small number of children could help materially improve operational resilience and the quality of service. In particular, our ability:

- to respond more flexibly to emerging issues across the estate, including redeployment of staff;
 - to offer a better regime for those children who remain; and
 - to meet our duty of care to staff and children.
7. The Ministry of Justice identified publicly owned sites that might be used as temporary prison accommodation if necessary, but it was recognised that this might not be sufficient by itself to create the amount of space required to separate/isolate prisoners and maintain operational integrity, depending upon the severity of the pandemic and the effectiveness of the measures to tackle it inside prisons. Moreover, given the immediate, fast-moving and unpredictable risks of COVID-19, it was necessary to be prepared, with a number of measures in place which allow for the most appropriate and effective response depending on how and when those risks materialise. Expanding the prison estate alone may not have allowed sufficient flexibility or alleviated the risks quickly enough. We could not risk waiting to assess its effectiveness before introducing this new legislative power, which is intended to allow more space in prisons to shield and isolate vulnerable individuals by releasing some prisoners where this can be done without putting the public at risk of harm or undermining their confidence in the criminal justice system.

B. Policy Rationale and Objectives

8. The Secretary of State for Justice made the SIs providing for the End of Custody Temporary Release (ECTR) scheme on 5 April 2020 and they came into force on 6 April. This was emergency legislation in response to a public health crisis where urgent implementation was required. That is why, unusually, this IA is being published after implementation, which in turn explains why the estimates reflect both what was known and reasonably anticipated at the time the SIs were made and what has been learned subsequently, following the implementation of the scheme.
9. The conventional economic approach to government intervention is based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or there are failures with existing government interventions (e.g. 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 (e.g. to reallocate goods and services to groups in society in more need).
10. In this case, the principal rationale for intervention and the associated policy objective was equity, to better protect life and health for those in custody and those working with them, and to minimise demands on the NHS. While there are existing release provisions which may be used for those in vulnerable groups and others for whom there is a compelling compassionate case to release, including the existing release on temporary license (ROTL) provisions, these provisions did not allow for release to meet the anticipated need arising from the coronavirus pandemic.
11. To meet the policy objective, the changes to the Prison and Young Offender Institution Rules granted the Secretary of State for Justice the authority to set temporary release policy to manage the prison population as part of the national plan to protect the NHS and save lives. This has enabled the establishment of the ECTR scheme, which allows certain prisoners nearing release to be released early. This action was necessary in response to the risk that thousands of prisoners could become infected, overwhelming local NHS services. There was a heightened risk due to the close proximity between prisoners, who often share cells. This is part of a package of measures that HMPPS has put in place for managing the prison population which balances the need to protect the public and maintain law and order, with protecting the health and safety of those working and detained in prison. The measures were considered necessary in order to:
- delay the spread of coronavirus within the prison system;
 - respond more flexibly to emerging issues across the estate, including redeployment of staff; meeting our duty of care to staff and prisoners;
 - isolate and manage any prisoners infected;

- reduce the risk of explosive outbreaks associated with closed settings; and,
- protect those in custody who are within vulnerable groups.

12. Additionally, it was necessary to make a consequential change under the Offender Management Act 2007 so that the licences for prisoners released on ECTR may include a requirement to reside in approved premises. Approved premises are generally used for higher risk offenders with more complex need and we do not expect them to be used with the low risk prisoners eligible for ECTR, but this change ensures that it could be included in the licence if a particular case were to require it.

C. Affected Stakeholder Groups, Organisations and Sectors

13. The following groups will be most affected by the measures in this impact assessment (IA):

- *HM Prison and Probation Service (HMPPS)* – sits within the Ministry of Justice (MoJ) and manages the adult prison population, including dealing with prisoner releases on a case-by-case basis as well as healthcare in prisons.
- *Ministry of Justice (MoJ)* – policy and budgetary oversight of the criminal justice system.
- *Youth Custody Service (YCS)* - manages the youth custodial population and sits within HMPPS.
- *The National Probation Service (NPS)/Community Rehabilitation Companies (CRCs)* – manages offenders on licence for the remainder of their sentence if released, along with Victim Liaison Officers (VLOs) who provide information and support to victims. Existing CRC contracts could require an amendment to accommodate any change of service, while they remain in place..
- *Local Authorities, including Youth Offending Teams (YOTs)* – manage and oversee the supervision of children in the community while on tag and provide accommodation to children released from youth custody (when required). Children will continue to be managed in the community post release by local Youth Offending Teams.
- *The Electronic Monitoring Service* – installs, monitors and removes electronic monitoring tags for both adults and children.
- *Department for Work and Pensions* – who provide benefits and other services to prisoners who have been released early.
- *The National Health Service (NHS)* – the main aims of the policy are to reduce the risk of overwhelming the NHS, who provide healthcare to individuals who will need to be transferred to hospital should they catch COVID-19 and symptoms become unmanageable.
- *Police* – protect the public and therefore responsible for the arrest of any recall or reoffence while on ROTL.
- *Her Majesty's Courts and Tribunal Service (HMCTS) and Legal Aid Agency* – as above, will be affected should any case come to court and potentially require legal aid as a result of any reoffence while the defendant was on ROTL.
- *Offenders and their families* – Though they have the choice not to be released early, those eligible would be released earlier than anticipated to their families or approved premises (or to care of the Local Authority in the case of children).
- *Public* - Releasing prisoners early from the custodial part of their sentence could appear to be less punitive and affect public confidence in the Criminal Justice System. However ensuring that only low-risk prisoners are considered for release under this provision, with appropriate monitoring, should strike the right balance between protecting prisoner health and public protection.

D. Description of Options Considered

14. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0: Do nothing:** Make no changes to the time spent in prison or automatic release
- **Option 1:** Legislate to allow certain defined categories of prisoners to be released on temporary licence, in order to manage the spread of COVID-19 within the prison estate.

15. Option 1 was chosen as it best supports the policy objectives.

Option 0

16. Under option 0, it was assumed that an outbreak in prisons would become unmanageable and increase demand for hospital intervention and Intensive Care Unit (ICU) beds at a faster rate than demand made by the general public, meaning that the public in need of these resources may be adversely affected, and the NHS may become overwhelmed.

Option 1

17. Under option 1, prisoners may be considered for release in accordance with the ECTR scheme published on 26 April⁷.

18. To qualify for release, prisoners must meet the eligibility and suitability requirements set out below.

19. Releases still require Prison Governor approval while prisoners must also agree to be released once approved.

20. Prisoners who meet the criteria for release are subject to strict conditions, and are electronically monitored with GPS tags to enforce a curfew and the requirement to stay at home. They can be immediately recalled to prison for breaching these conditions or committing further offences.

Statutory exclusions set out in the SI

21. ECTR only applies to prisoners serving fixed term sentences with an automatic release date (e.g. Standard Determinate Sentences for adults and Detention Training Orders or sentences under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 for youths). Those serving a custodial sentence with release at Parole Board discretion – those serving indeterminate sentences (such as life imprisonment), extended sentences, Sentences for Offenders of Particular Concern (SOPC) and terrorist offenders subject to the new Terrorist Offenders (Restriction on Early Release) (TORER) Act 2020 release provisions – are statutorily excluded.

22. Registered sex offenders, Category A and Restricted status prisoners, prisoners liable to deportation who have exhausted in-country rights of appeal against removal, those who have committed offences while at large from release on temporary licence (ROTL), and those on remand or committed for trial (as they are not serving a sentence) are also statutorily excluded.

Additional Requirements made by Ministerial Direction

23. The new Prison and Young Offender Institution Rules provide that the Secretary of State may issue a direction describing a class or classes of prisoners (not already excluded by the statutory criteria described immediately above) who may be released on ECTR. On 7 April, the Secretary of State directed that to be eligible for ECTR prisoners must additionally:

- Be within 61 days of their conditional release date;
- Have already served at least half the custodial element of the sentence;

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf

- Be assessed as having a low or medium Risk of Serious Harm level;
- Not be eligible for multi-agency public protection arrangements (MAPPA) oversight on release, (which includes being sentenced for a sexual or violent offence in Schedule 15 of the Criminal Justice Act 2003), or be serving a sentence for one of the specified list of excluded offences;
- Not be subject to recall at the time of assessment;
- Not be serving a sentence of four or more years imprisonment for a specified weapons possession offence;
- Not be assessed as posing a risk to national security if released; and
- Not be identified as posing a risk of Domestic Violence or Child Safeguarding;

24. The published policy stipulates that prisoners must not present a level of risk of harm, reoffending, failure to return or other significant challenge that cannot reasonably be managed in the community and sets a very strong presumption that the following prisoners are not to be eligible for ECTR unless there are exceptional circumstances to depart from this:

- Those serving a sentence for a COVID-19-related offence, for example an offence under the Coronavirus Act 2020 or a conviction for theft of medical supplies intended to tackle COVID-19;
- Those without suitable accommodation to be released to and, where relevant, the property owner does not agree to the installation, charging and maintenance of any devices to support electronic monitoring;
- Those subject to any outstanding charges, or who have been referred to the police or an independent adjudicator dealing with offences in custody; and
- Those whose healthcare, including any COVID-19 considerations, cannot be safely managed post-release.

25. Children will only be released if they have suitable and safe accommodation (including local authority accommodation) to go to and their home local authority's YOT confirms its capacity to handle the child safely in the community.

26. Offenders who are classed as 'Category A', or 'Restricted' are excluded unless they are children under 18 years of age. This is because the youth justice system is distinct to the adult system, and children are not subject to the same security categorisation as adults, so exclusions based on 'Category A' classification do not apply. Children are considered for restricted status based on severity of offence, but may not receive it. The published policy therefore includes an annex of excluded offences covering the most serious drug-related offences – those concerning the production and supply of all classes of drug and the possession of Class A drugs. This, combined with the other annexes to the policy and the individual risk assessments, should achieve much the same effect as the security classification in the adult estate's policy. On 24 April, the Secretary of State issued a Direction covering children and young people which set out this requirement.

E. Cost and Benefit Analysis

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

28. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England, Wales and Scotland 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.

29. 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).

30. It is important to note there remains uncertainty around the impact of COVID-19 on Criminal Justice demands, namely the duration of the pandemic, the number of new cases entering the prison estate, suitability of offenders being released during this period and ensuring suitable provisions are in place, prison Governors' approval of releases, and prisoners themselves also being required to agree to early release. This uncertainty was greater still at the start of April when these SIs were made.
31. Various factors affect the rate at which prisoners can be released during the pandemic period and the overall numbers released, many prisoners who qualify for release under ECTR will also qualify for release under the Home Detention Curfew scheme. It is therefore difficult to predict the total number of prisoners likely to be released under ECTR, itself, over the course of the scheme. Given the multiple uncertainties and other potential changes in demand, the impacts of Option 1 are presented under three potential prisoner release volume scenarios which reflect the breadth of potential impacts:
- **Low:** An achieved release of 100 offenders over the duration of the policy, and zero from the youth estate. This represents the lowest anticipated number of releases using ECTR during the pandemic period.
 - **Central:** An achieved release of 500 offenders over the duration of the policy, including less than 10 from the youth estate. This represents a moderate to high number of releases using ECTR during the pandemic period.
 - **High:** An achieved release of 4,000 offenders over the duration of the policy, including around 40 from the youth estate. This represents the initial estimate of the maximum number of potentially eligible prisoners currently in the estate who could be released before taking account of the detailed eligibility and suitability criteria. This is illustrative of the scale of scheme that might have been necessary, depending on how the impact of COVID-19 developed within prisons.
32. In light of developments since the scheme was implemented and the way the pandemic has unfolded in terms of its impact on prisons, it appears that the number of releases required is likely to be around the central volume scenarios. But the duration and impact of the outbreak period remains uncertain. Thankfully, an explosive outbreak in prisons has not materialised and the other measures put in place have been successful so far in managing the impacts, meaning that fewer releases than initially anticipated have been required. It was necessary, however, to be prepared by having the power in place in case the situation developed in a different way requiring a higher number of releases.
33. The SIs give the power to the Secretary of State to issue further policy directions under the legislation, if deemed necessary to change the approach to release within the scope of the new Rules, therefore possible volumes may change as these volume scenarios are based on the current directions.
34. The costs and benefits are presented in aggregate for the policy throughout this IA. All estimates, unless stated otherwise, are monthly figures in 2019-20 prices rounded to nearest £100k.
35. Unless otherwise stated, a 20% optimism bias has been applied to all impacts (costs and benefits). No annual discounting has been applied as it is anticipated the policy will terminate within the calendar year.
36. The issues and risks associated with these – and other – assumptions are detailed in section F.

Option 1: Legislate to allow certain defined categories of prisoners to be released on temporary licence, in order to manage the spread of COVID-19 within the prison estate.

Costs of Option 1

Monetised costs

Electronic Monitoring

37. All prisoners released (including from the youth estate) will require electronic monitoring (EM), which will incur costs of installation, monitoring and removal. Under our central scenario, an estimated 500 offenders could require GPS tags at a cost of an additional £8.2m for the duration of their use.
38. Under the low scenario, an estimated 100 offenders will require electronic monitoring at an estimated cost of £8.0m. Under the high scenario, requiring 4,000 tags would have an estimated cost of £9.8m.
39. The potential costs of EM vary little between the scenarios. This is because a significant proportion of the cost is to cover the set up and provision of a fixed level of EM capacity for a six-month minimum period. Actual usage of that capacity and the associated variable costs is a small proportion of total cost and the only difference between the scenarios. We are considering alternative uses for any tags not required for the ECTR scheme.

Accommodation for releases from the adult prison estate

40. Adult prisoners with accommodation needs released on ECTR may receive financial support from the MoJ/HMPPS for up to 56 nights of accommodation. It is unclear how long offenders with accommodation needs will require accommodation support, but for the purposes of this IA it has been assumed this will last two months and 25% of the cohort may have accommodation needs⁸.
41. Under our central scenario, the impact of providing financial support for those with accommodation needs is estimated to be around £0.6m. It is not expected that all those eligible would require accommodation for the full period, therefore the actual cost may be lower.
42. Accommodation provision under the low and high scenarios is estimated to cost about £0.1m and about £4.7m respectively.

Local Authorities: Accommodation for releases from the youth estate

43. Local authorities are responsible for providing accommodation to children released from custody, where required. 2019 inspection data from Her Majesty's Inspectorate for Prisons (HMIP) based on the release of 50 children between October 2018 and April 2019 suggests that around 36% of children leaving custody require accommodation⁹.
44. The MoJ has agreed to cover the cost to local authorities of providing children with accommodation between their ECTR release date and their Conditional Release Date.
45. The cost of accommodation can vary substantially depending on the needs of the child and the availability of suitable places. Based on the 2019/20 Secure Children's Home (SCH) sector price, we have assumed accommodation costs £21k per child per month¹⁰.
46. Under the central scenario we estimate fewer than 5 children will require accommodation at a cost of around £0.1m, under the low and high scenario we estimate that no children will be released and about 15 children will require accommodation respectively, at a cost of £0 and about £0.6m.

⁸ 25% figure includes rough sleeping, other homeless, and unsettled accommodation from the Community Performance Data: in the Community Performance Data: in the Community Performance Data: in the Community Performance Data: - <https://www.gov.uk/government/statistics/community-performance-quarterly-update-to-march-2019>

⁹ HMIP (2019). Youth resettlement – final report into work in the community.

¹⁰ Formal response to a Freedom of Information request (09/01/2020).

47. It should be noted that there is uncertainty regarding the number of children likely to require accommodation and average cost of this accommodation, which may vary substantially between YOTs and is dependent on the specific needs of the child.

Provision of Benefits and Grants

48. MoJ is providing adult prisoners released on ECTR with an extra £34 to their subsistence grant (a total of £80 each). This is being given as a one-off payment intended to cover any immediate short-term needs before they can access Universal Credit and because of the current situation. They may, for example, need to buy food to remain at their accommodation for a longer period of time than might normally be the case, and they will have had less time to prepare for release than those who were expecting to be released from prison; i.e. at their automatic release date. This is estimated to cost less than 0.02m under our central scenario. Under the low and high scenarios, this is estimated to be a negligible cost and less than £0.2m respectively.
49. Providing released prisoners with access to Universal Credit while serving (up to 2 months) ECTR, including DWP staff and resource costs required to deal with additional prisoner claims, is an additional cost. It is estimated that the financial impact under the central scenario would be £0.8m. This assumes all released prisoners claim universal credit and hence is likely to be an overestimate. Under the low and high scenarios, this would cost £0.2m and £6.7m respectively.
50. While these benefits represent a cost to government, they are a transfer payment and have therefore been excluded from present value calculations in this IA.

Youth Offending Teams

51. The increased volume of young offenders being supervised in the community will place additional pressure on YOTs. The main driver of this pressure will be the additional staff time required to adequately manage these children in the community. Our central scenario estimates fewer than 10 children will be released over the life of the policy and will require up to 61 additional days of supervision at a cost of £850 per child per month¹¹. We estimate, however, that the overall cost of this will be negligible.
52. Under our low scenario no children will be released over the life of the policy so will not require any additional supervision. Under our high scenario 40 children will be released over the life of the policy and will require up to 61 additional days of supervision. We estimate this will cost less than £0.1m.

Non-monetised costs

Probation Supervision

53. The increased volume of offenders in the community on ECTR may require additional staff time though this will take the form of telephone contact as offenders are otherwise monitored through GPS tags. It is anticipated that any associated costs will be negligible and have therefore not been costed.

Police & HMPPS

54. As some offenders will spend up to an additional 61 days out of custody and be electronically tagged under this option, it is possible that there could be an increased incidence of recall arising from the increased risk of offenders breaching the conditions of their licences during this extra period. This could lead to more work for the police service for arrest and HMPPS staff involved in the administration of the recall process.

¹¹ NAO (2010). The youth justice system in England and Wales: Reducing offending by young people.

55. At present, only 1 in every 780 incidences of temporary release resulted in failure between July to September 2019¹². While it is difficult to predict how behaviour may change in this specific context of the COVID-19 pandemic, any additional costs to the police arising from recalls are assumed to be negligible.

HMCTS and Legal Aid Agency

56. As with the police, HMCTS and LAA will be impacted by recalls of those released from custody on temporary licence where recall is due to further offending. Since it is difficult to predict how behaviour may change in the specific context of the COVID-19 pandemic and that, in any event, the overall number of failures amongst those released under ECTR would likely be very small, any additional costs to HMCTS or LAA are assumed to be negligible.

Offenders

57. Offenders may struggle with the unnatural way of life upon release given countrywide government restrictions for social isolation placed on all people.

Public confidence, including Victims

58. Releasing prisoners early from the custodial part of their sentence could affect public and victim confidence in the criminal justice system, for example if the public perceive being placed at risk, or that the prisoner was not being properly punished. The scheme results in prisoners being released earlier than otherwise, but only by a maximum of 61 days. The cohort of eligible prisoners excludes a broad range of offenders including those serving sentences for sexual or violent offences, or where there are concerns about domestic abuse or child safeguarding. In addition, prisoners are required to wear an electronic tag, comply with stringent licence conditions, as well as the country-wide COVID-19 lockdown measures. As a result of these protective measures we do not expect public confidence in the criminal justice system to be undermined.

Benefits of Option 1

Monetised benefits

Prison Services and youth custodial estate

59. This option makes the prison estate more manageable on a temporary basis while operating at a lower staffing level to create room to enable effective social distancing during the pandemic period. Therefore, we use a marginal cost of £125 per month per prisoner¹³, which translates to the savings made from needing to house an offender in prison for this period, where their addition to the prison estate simply leads to an increase in the prison population with no effect on fixed overheads. Prison running costs may be higher or lower depending on the specific COVID-19 measures adopted, such as the increased use of cleaning contractors, or to accommodate isolating prisoners and meet their other specific needs'

60. Under the central scenario, an estimated 500 prisoners (including fewer than 10 children from the youth estate) will be released from the custodial portion of their sentence up to two months prior to what was expected. This is estimated to produce a saving of around £0.1m. Under the low and high scenarios, an estimated 100 prisoners would be released at a negligible benefit, or 4,000 prisoners at an estimated benefit £0.8m.

61. As this option is temporary, a reduced prison population would not necessarily translate into the closure of prison cells, wings or entire prisons. However, the reduced prison population will facilitate a reduction in crowding and help in safely managing prisons during the COVID-19 outbreak.

¹² <https://www.gov.uk/government/publications/offender-management-statistics-quarterly-july-to-september-2019/offender-management-statistics-quarterly-july-to-september-2019#releases>

¹³ Sourced from HMPPS internal analysis

Non-monetised benefits

National Health Service & Fatalities

62. The change created by option 1 reduces pressure on the NHS by allowing for a safer environment to be created where COVID-19 is less likely to spread. The initial assessments of the potential impact of COVID-19 in prison were that thousands of prisoners could die and thousands more would need to be treated in hospital at a time when those services were in high demand by the general public. Although the measures that HMPPS have been able to deliver have been very effective in helping to avoid this outcome to date, this release measure offers another option to help reduce the volume of cases admitted to hospital, requiring fewer ICU beds and thereby helping the NHS use their resource effectively. It contributes to the other measures that HMPPS has put in place¹⁴ to reduce the risk of transmission to offenders and prison staff, therefore reducing the risk of death faced by both groups, which will in turn, reduce worries of prison staff, prisoners and their families.

Safety and security in the custodial estate

63. The measure may contribute to making prisons safer places for both prisoners and staff, by delivering a modest reduction in prison population thereby reducing the risk of an explosive outbreak of COVID-19 and enabling staff to be better placed to work with prisoners as well as to facilitate clinical movements and provide an operational buffer to be able to better manage the prison population under the circumstances.

64. While it would be easier to manage prisons with fewer prisoners in the population, staff levels have also decreased. Prison regimes are also very different currently, as prisons are in “lockdown”, attempting to reduce social interaction in multiple occupancy cells and shared sanitation areas, prisoners are only being let out in small groups for exercise to enforce social distancing measures, or let out for essential work.

65. The youth estate does not face the same immediate pressures as the adult estate: occupancy rates are around 80% (c.800 children) and each child has their own room. However, the size and configuration of the estate means that sites are especially vulnerable to even small-scale incidents of the virus or staff absence. Releasing even a small number of children would materially assist with operational resilience and the quality of service. In particular, our ability:

- to respond more flexibly to emerging issues across the estate, including redeployment of staff;
- to offer a better regime for those children who remain; and
- to meet our duty of care to staff and children.

Offenders and their families

66. Offenders eligible for an early release may benefit from longer periods of time to settle into their post-release phase, while under supervision via an electronic tag, bridging the gap between incarceration and standard licence. Earlier resettlement into the community will also mean they will be able to support themselves and their families earlier in the sentence

Unquantified impacts

67. Given the limited and uncertain nature of the policy, we are unable to estimate the longer-term impacts such as on reoffending and/or reconviction. However, prior MoJ research suggests that experience of ROTL tends to reduce the risk of reoffending¹⁵.

¹⁴ See, e.g., <https://www.gov.uk/government/news/prison-visits-cancelled>

¹⁵ <https://www.gov.uk/government/publications/reoffending-impact-of-increased-release-of-prisoners-on-temporary-licence>

F. Assumptions and Risks

68. No sensitivity analysis has been conducted as part of this IA due to the temporary nature of this provision, however three scenarios have been considered to take into account uncertainty around the volume of releases.

69. The impacts estimated in this IA are based on certain assumptions. These assumptions, and the associated risks, are described in Table 1 below.

Table 1: Assumptions and Any Associated Risks

Assumption	Risks
The provision only applies to low risk prisoners nearing the end of their sentence	There is a risk that ineligible prisoners are released. However, this has been mitigated by a series of checks being put in place overseen by a central HMPPS Hub.
All prisoners are assumed to be released on time and experience ECTR for a duration of two months.	The security checks, and other operational processes, put in place to protect the public mean that there could be delays in release. Nevertheless, this assumption provides a conservative estimate because it could be the case that not all prisoners will have the full two months left to serve and therefore will not be on ECTR for the full two months.
Under the central scenario, a total of 500 early releases over the duration of the provision are assumed, including fewer than 10 from the youth estate. This represents a moderate to high number released under the scheme, notwithstanding other provisions for release which could also cover the cohort. Low and high scenarios of 100 and 4,000 releases have been modelled, including children, to express the full range of potential use for the provisions under the scheme. It should be noted that any other releases to tackle the threat of COVID outside of this provision, e.g., vulnerable groups, pregnancy, compassionate grounds, could also be included under the 4,000 volume scenario.	These are considered to be the best estimates of the volume of releases resulting from this provision and in light of experience to date. However, the scheme is still running and there remains some uncertainty regarding how the wider situation relating to COVID-19 will develop and how this may impact the adult and youth estate specifically. Therefore, actual volumes could be lower or higher than these estimates. The process is a rolling programme, and so others may subsequently become eligible for release for example under new policy directions (not modelled here).
Individuals released through this provision would otherwise have been released at their conditional release date.	If individuals in the cohort to be released through this provision would have been released early due to other provisions (e.g. Home Detention Curfew or Early Release from Detention Training Orders) then this may be an overestimate of the impact.
All adults and children released through this provision will require GPS electronic monitoring and costs are largely driven by provision of enough equipment to cope with the high scenario rather than the daily concurrent caseload.	It is very unlikely that the equipment procured will all be used for the ECTR scheme but other uses will be found for any surplus tags. Where necessary, for example, they might be used with prisoners released on compassionate grounds due to extreme vulnerability to COVID-19, or to add location monitoring capability for those released under the home detention curfew (HDC) scheme as required.
All releases will receive an additional £34 on their subsistence grant, to make a total of £80.	This is an estimated cost to cover their basic needs during their first week of release and is given immediately upon release to provide time to put in

	place more regular, ongoing support. The subsistence grant is higher than usual as they might have more immediate short-term needs because of the current situation (for example, to buy food to remain at their accommodation for a longer period of time than might normally be the case) and have had less time to prepare for release than those who were expected to be released from prison. It assumes, of course, that accommodation will have been provided for them in addition to this payment.
The average monthly Universal Credit claim is £667, and the costs to DWP to deliver Universal Credit to the extra cohort is £71.34 per claim.	This is the estimated average based on number of forecasted Universal Credit claims at a forecasted expenditure in 2019/20, and the resources required to deal with additional prisoner claims. Not all prison leavers will make a claim for UC and will vary greatly on prisoner's individual circumstances and what accommodation arrangements they may have. The estimated UC costs, therefore, are likely to be high.
25% of adult prisoners present a past or present accommodation need ¹⁶ .	It is estimated that 25% of the eligible cohort will have an accommodation need and therefore require support. This includes reported rough sleeping, other homelessness and unsettled accommodation using community performance data. Not all prisoners with accommodation needs will be released, as having a verifiable, safe place to go is a key criteria or they will be released once accommodation support is arranged and in place.
Accommodation costs are estimated on the basis of approximately 25% of offenders on ROTL presenting accommodation needs. Offenders are entitled to financial support of £65 per night for up to 56 nights, though this has been simplified to two months to apply a plausible upper limit for ease of calculations.	Not all eligible prison leavers utilising this provision will require accommodation for the full two months, and the budget of each accommodation may vary, particularly London vs. nationally.
36% of children released from youth custody under these provisions will require accommodation provided by the local authority. Based on HMIP final report into resettlement (Oct 2019)	The actual proportion requiring accommodation may vary from this assumption meaning the costs could be higher or lower than estimated.
Accommodation for children released under this provision is assumed to cost around £21,000 per month. This is based on the 2019/20 Secure Children's Home (SCH) sector price.	Actual costs will vary significantly based on the specific needs of the individual. Given that only low-risk offenders will be eligible for release this may be an overestimate. Nevertheless, the pressure of COVID-19 on the residential children's home sector may inflate the cost of placements, meaning that costs could also be higher than estimated.
The cost of YOT supervision is estimated to be around £850 per month. This is based on the average of the low and high band estimates of the average cost of the community element of a Detention Training Order, uprated to current prices ¹⁷	There is a large amount of uncertainty regarding the additional costs of supervision, actual costs will vary between YOTs and the specific needs of the child. These may be overestimates of the cost since they are based on the average cost of the community element of a DTO whereas all early releases would have entered YOT supervision

¹⁶ - <https://www.gov.uk/government/statistics/community-performance-quarterly-update-to-march-2019>

¹⁷ NAO (2010). The youth justice system in England and Wales: Reducing offending by young people.

	regardless of this release meaning additional costs may be marginal.
Monthly marginal savings of releasing adults and children from custody is £125 to HMPPS. This represents the additional cost per year of housing an offender where their addition to the custodial estate simply leads to an increase in the population with no effect on fixed overheads.	Given the rationale of the provision is to alleviate pressures in the estate during this period and not to enable staff savings or the closure of parts of the estate these is a reasonable assumption.
Given that offenders released on temporary licence under the scheme will be electronically tagged and monitored via telephone contact, it is assumed that no additional probation staff would be required.	Should releases under the scheme dramatically increase and/or probation service experience higher levels of staff absence than expected, this may be an underestimate of resource needed.

G. Wider Impacts

Equalities

70. An equalities impact assessment is published alongside this IA.
71. The equalities assessment estimates that the provisions of the policy, including its exclusions, are not directly discriminatory, as the policy applies in the same way to all individuals regardless of their protected characteristics.
72. The nature of the offence, the seriousness of offending, and current assessment of risk determine whether the exclusion from eligibility are applied. Equalities analysis suggests that the exclusions will be more likely to affect male, minority ethnic and older prisoners. However, we do not consider that amounts to indirect discrimination as the exclusion is a proportionate means of protecting the public and maintaining confidence in the administration of justice. The offenders excluded from ECTR may still be considered for temporary release if they meet the normal ROTL criteria, including where there are compelling compassionate grounds to do so.

Better Regulation

73. These proposals do not meet the definition of regulation under the Small Business Enterprise and Employment Act 2015. Any costs which arise will not score against the department's business impact target and will met by MoJ and HMPPS.

H. Monitoring and Enforcement

74. In the normal way, releases will be monitored for the duration of the transmission control period both to manage the risks associated with prisoner release as well as easing public health pressures on the prison population and prison staff. The provisions under this legislation are temporary.