

Title: Counter-Terrorism and Security Bill – Kidnap and Ransom IA No: HO0145 Lead department or agency: Home Office Other departments or agencies:	Impact Assessment (IA)	
	Date: 20/10/2014	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Primary legislation	
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Summary: Intervention and Options	RPC Opinion: NA
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
N/K	N/K	N/K	N/A	N/A

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

On 29 August the Joint Terrorism Analysis Centre raised the UK threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. There is a need to legislate to deal with the increased terrorist threat. The Terrorism Act 2000 criminalises any form of terrorist financing, however it does not explicitly prohibit UK insurance and reinsurance companies from reimbursing payments made in relation to kidnap and ransom claims where there is knowledge or reasonable cause to suspect that payment was made to UK-proscribed terrorist groups. The fact that a UK insurance or reinsurance company could reimburse an organisation or individual for the payment of a terrorist ransom is at odds with the Government's position on countering terrorist finance and non-payment of terrorist ransoms.

What are the policy objectives and the intended effects?

1. Ensure that UK insurance and reinsurance companies are not involved in any part of a kidnap and ransom payment chain where the end recipient is a terrorist entity;
2. Maintain the UK Government's reputation of having a robust policy position on the non-payment of terrorist ransoms and countering-terrorist finance; and
3. Discourage insured companies and individuals from making a ransom payment to a terrorist entity in the knowledge that a UK insurer would not reimburse them for that payment.

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

Option 1 is to make no changes (the do nothing option). Given that insurance payments for terrorist ransoms are not currently explicitly stated in existing terrorist financing legislation as being unlawful, the possibility exists that UK insurance companies will reimburse those who pay a ransom demand to terrorists and fund future terrorist activity.

Option 2 is to legislate. This is the preferred option as it will meet the policy objectives. Introducing a new offence under the Terrorism Act (2000) would put beyond doubt that an insurer/reinsurer commits an offence if they reimburse an insured party where they had knowledge or reasonable cause to suspect that the insured party had made, or will make, a payment in response to a terrorist demand.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2016					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20: Yes	Small: Yes	Medium: Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/K		Non-traded: N/K	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Option 1 is to make no changes (the do nothing option).

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.00	High: 0.00	Best Estimate: 0.00

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	NA	0.00	0.00
High	NA		0.00	0.00
Best Estimate	NA		0.00	0.00

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

Do nothing option.

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

Do nothing option.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	0.00	0.00
High	NA		0.00	0.00
Best Estimate	NA		0.00	0.00

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

Do nothing option.

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

Do nothing option.

Key assumptions/sensitivities/risks

Do nothing option. Given that insurance payments for terrorist ransoms are not currently explicitly captured by existing terrorist financing legislation, the possibility exists that UK insurance companies will reimburse those who pay a ransom demand to terrorists and fund future terrorist activity.

Discount rate (%) 3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.00	Benefits: 0.00	Net: 0.00	N/A	N/A

Summary: Analysis & Evidence

Policy Option 2

Description: Option 2 is to legislate.

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/K	High: N/K	Best Estimate: N/K

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	N/K	N/K
High	Optional	N/K	N/K
Best Estimate	N/K	N/K	N/K

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

We estimate the weighted unit cost per case to the Criminal Justice System to be £53,300, but the prediction of likely volume of cases is not feasible and therefore we do not calculate the total cost.

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

We expect there to be negligible costs to the National Crime Agency, Police, Government, Insurers and Regulators from dealing with instances where the proposed law is broken.

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

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

There are no monetised benefits for this option.

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

This option will help maintain the UK Government's reputation of having a robust policy position on the non-payment of terrorist ransoms and countering-terrorist finance. It may help disrupt terrorism if individuals do not make payments to terrorists because they will not be reimbursed. This option can also provide clarity to UK insurers/reinsurers about situations in which they are unable to reimburse.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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There is a risk that UK insurers/reinsurers may lose business. Overseas insurers may be able to offer the same product as UK insurers but without this restriction. Based on consultation, we estimate that UK insurers/reinsurers' annual gross premium income from kidnap and ransom insurance policies to be between £60 and £160 million. This provision will not affect insurers' UK consumers as it is already illegal to pay a terrorist ransom in the UK. We do not know the proportion of kidnap and ransom clients accounted for by Non-UK consumers.

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base (for summary sheets)

Define the problem

On 29 August the Independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. Approximately 500 individuals of interest to the police and security services have travelled from the UK to Syria and Iraq since the start of the conflicts; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant (ISIL). On 1 September the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations, or conduct terrorist related activity, and subsequently returning the UK, and to deal with individuals already in the UK who pose a risk to the public.

Ransom money paid to terrorists funds their future activity which in turn increases the likelihood of an attack and poses a risk to the UK's national security. It also incentivises further kidnaps. Reducing terrorists' funds will have a direct impact on the ability of terrorist organisations to function and launch attacks.

The Terrorism Act 2000 criminalises any form of terrorist financing, however it does not state explicitly that UK insurance and reinsurance companies reimbursing payments to insured parties where there is knowledge or reasonable cause to suspect that the insured party has made or will make a payment in response to a terrorist demand is unlawful. A UK insurance or reinsurance company reimbursing an organisation or individual for the payment of a ransom to terrorists, would clearly be at odds with the Government's policy position on both countering terrorist finance and non-payment of ransoms to terrorists.

The UK Government has actively condemned the payment of ransoms to terrorists. At the G8 summit in June 2013, the UK pressed for members to sign a communiqué on the non-payment of terrorist ransoms. The UK also championed the adoption of UN Security Council Resolution 2133 (January 2014) which recognises terrorist ransoms as a funding stream for terrorist groups and calls on members not to pay for terrorist ransoms. There is a reputational risk for the UK Government if UK companies were permitted to reimburse individuals or companies to cover payments made to terrorist groups.

B. Rationale

Protecting the UK against terrorism is a fundamental role of Government. Counter-terrorism measures require judgments on the need to balance protecting the public with safeguarding civil liberties and dealing with sensitive issues of national security. Such judgments should not be left to the private sector. The private sector does not have the access to intelligence to understand the scale/nature of the threat.

It is the Government that manages sensitive information and intelligence on individuals that pose a terrorist threat and is responsible for the safety and security of UK citizens. Given the necessity of counter-terrorism measures, and the role of the Government to protect the public, the Government is uniquely placed to fulfil this role.

C. Objectives

1. Ensure UK insurance and reinsurance companies are not involved in any part of a kidnap and ransom payment chain where the end recipient is a terrorist entity;
2. Maintain the UK Government's reputation of having a robust policy position on the non-payment of terrorist ransoms and countering terrorist finance; and
3. Discourage insured companies and individuals from making a ransom payment to a terrorist entity, in the knowledge that a UK insurer would not reimburse them for that payment.

D. Options

Option 1: Make no changes (the do nothing option)

Given that insurance payments for terrorist ransoms are not currently explicitly stated as being unlawful under existing terrorist financing legislation, the possibility exists that UK insurance companies might reimburse those who pay a ransom to terrorists and fund future terrorist activity.

Section 17 of the Terrorism Act 2000 ("Funding Arrangements") makes it an offence for an individual to enter into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he has reasonable cause to suspect that it will or may be used for the purposes of terrorism. However it does not state explicitly that UK insurance and reinsurance companies from reimbursing payments to insured parties where there is knowledge or reasonable cause to suspect that the insured party has made or will make a payment in response to a terrorist demand is unlawful.

Option 2: Legislate

Introduce a new offence for inclusion under the Terrorism Act 2000. This would make it an offence for an insurer to reimburse an insured party where they had knowledge or reasonable cause to suspect that the insured party had made, or will make, a payment in response to a terrorist demand. Terrorism in this context refers to the definition set out in Section 1(1) of the Terrorism Act 2000. This defines terrorism as use or threat of action (as specified in Section 1(2)) designed to influence the government or to intimidate the public or a section of the public, and is done for the purpose of advancing a political, religious, racial or ideological cause.

Groups Affected

Criminal Justice System: There will be costs to the criminal justice system if the proposed law is broken.

Kidnap and ransom clients: Those who enter into a kidnap and ransom contract with a UK insurance company and make payments in response to a kidnap by terrorists will not be reimbursed under their contract.

Financial Conduct Authority and Prudential Regulatory Authority: will need to ensure insurance and reinsurance companies carry out sufficient due diligence checks to determine the recipient of a ransom payment.

National Crime Agency and Police: we predict there could be a small increase in the number of investigations and arrests.

Private security companies/kidnap responses consultants: who are directly involved in the negotiations of a kidnap case and relay details to the insurance and reinsurance company.

UK insurance and reinsurance companies: those that offer kidnap and ransom insurance.

We have consulted the insurance sector and its regulators including the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA), Hiscox, Lloyd's of London, Lloyd's Market Association, and members of the Willis Group (largest kidnap and ransom broker) on the impact of the measure on the insurance and reinsurance market.

COSTS

Monetised costs

To the criminal justice system

Cost estimates have been produced using unit costs for different parts of the criminal justice system. We estimate the weighted unit cost per case to the Criminal Justice System (CJS) to be £53,300. There are some assumptions and caveats associated with these. See the **Annex** for a full outline of the assumptions and associated risks, and see below for a further breakdown of the costs to each CJS agency.

A proxy offence has been used to estimate the flow of the new offence through the CJS. The following proxy was used:

- Section 17 of the Terrorism Act 2000 ("Funding Arrangements") is comparable to the proposed offence.
- Section 17 makes it an offence for an individual to enter into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he has reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- It also carries the same maximum available sentences as the proposed new offence (6 months imprisonment for summary conviction, 14 years imprisonment for indictable conviction).
- Available data records this offence as part of a wider group of related offences; this could mean that case progression assumptions are driven by other offences. The volume of annual proceedings is small so an average over several years has been used.

CPS and HMCTS

Prosecution costs to the CPS and court costs to HMCTS are different in the Magistrates Court (MC) to the Crown Court (CC), and are higher in the latter. As this offence is triable either way, we estimate the weighted cost to HMCTS and the CPS.

It is estimated that the cost to the CPS will be approximately £2,900 per case using data from the proxy offence.

It is estimated that costs to HMCTS will be approximately £1,000 per case using data from the proxy offence.

Legal Aid (LA) Costs

LA eligibility and costs also differ in the MC and CC; typically a higher proportion of defendants are eligible in the CC where costs are also higher.¹

It is assumed that the eligibility rate is 50% in the magistrates' court and is 100% in the Crown Court.

Using data from the proxy offence, this enabled us to estimate that the cost to the Legal Aid Agency (LAA) will be approximately £5,200 per defendant.

Prison costs

The average prison costs per proceeding are weighted by the estimated proportion of defendants proceeded against that receive a custodial sentence and the average custodial sentence length (ACSL) served.

Using data from the proxy offence, it is estimated that the ACSL given will be approximately 52 months.

It is then assumed that the average time served will be half that; in this case approximately 26 months.

The estimated prison costs are therefore approximately £40,400 per defendant.

Probation costs

The estimated average cost consists of two types of probation costs.

Post-release probation: It is assumed that an offender given a custodial sentence of 12 months or over will serve half of their sentence in custody and the other half on post-release licence. This component of the probation costs is weighted by the proportion of defendants proceeded against given a custodial sentence of 12 months or over and the ACSL served (as with the prison costs above).

Probationary sentences: This includes community orders and suspended sentence orders. The estimated total probation costs are approximately £3,900 per defendant. As this is based on data from the proxy offence, we have assumed that this will consist entirely of post-release probation costs.

Estimating total CJS costs

All of the above are intended to estimate how cases may progress through the criminal justice system and the associated costs. We estimate the weighted unit cost per case to the Criminal Justice System (CJS) to be £53,300. Prediction of likely volume of cases is not feasible. In due course the cost per defendant would be applied to the estimated number of proceedings to estimate the total downstream costs to the Ministry of Justice.

As an example only, if 10 defendants were proceeded against per year for the proposed new offence, total costs to the CJS would be approximately £533,000.²

¹ Legal Aid eligibility in the magistrates' court is dependant on a defendant passing the interests of justice test, and a means test. For more information, see: <https://www.gov.uk/legal-aid/eligibility>

² Rounded to the nearest £1,000 and in 2013/14 prices.

Non-monetised costs

To existing/potential UK customers

Consumers will continue to have access to UK kidnap for ransom policies or complementary risk management services. It is already illegal to pay a terrorist ransom in the UK, so this restriction on UK insurers/reinsurers will not affect UK consumers.

To the National Crime Agency and Police

The number of offences is expected to be negligible, and we assume that this is also true of the resulting additional costs to the National Crime Agency and Police.

To small and medium enterprises

Consultation suggested that primarily large firms provide kidnap and ransom insurance. However, there may be some smaller specialist kidnap and ransom brokers or insurers, for whom the loss of business will be more severe. Consultation was unable to establish how many of these firms there might be, although their proportion of the market is expected to be small. These businesses should not be exempt from the policy as it would undermine the objective of 'Maintain the UK Government's reputation of having a robust policy position on the non-payment of terrorist ransoms and countering terrorist finance'.

Transition costs to government and UK insurers/insurance regulators

There will be costs to government of producing guidance and ensuring that all UK insurance and reinsurance firms, and regulators such as the FCA and PRA understand how to comply with the new legislative change. We assume these costs will be negligible relative to the expected loss of business and therefore do not monetise them. Similarly, we expect there will be costs to UK insurance companies of explaining the change in legislation to existing and new customers and private security companies/kidnap response consultants.

Recurring costs to UK insurance regulators

The FCA and PRA already regulate the UK insurance/reinsurance industries. We expect that there will be additional costs to them as a result of this legislation and the increased need to ensure due diligence, but that these costs will be negligible.

BENEFITS

There are no monetised benefits for this option

Non-monetised benefits

Clarity for UK insurers and reinsurers

UK insurers and reinsurers will benefit from increased clarity about the situations in which they are unable to reimburse customers, and therefore avoid incurring legal or reputational costs.

Disruption to terrorist activity

This legislative change may help to disrupt terrorist activity. If individuals do not pay ransoms to terrorists because they will not be reimbursed by UK insurance and reinsurance companies then this will make it more difficult for terrorists to acquire funds by kidnapping. However, the

size of this benefit is uncertain as insurance products are available from Non-UK insurers/reinsurers and individuals or groups may still make ransom payments to terrorists despite there being no reimbursement facility.

Improved disruption techniques will reduce the ability of individuals in the UK to influence, plan and/or execute an attack. A terrorist attack can have a large impact on the UK, both in terms of the immediate impact, such as lives lost, damaged infrastructure and lost output, and longer term costs such as higher public anxiety.

Maintain the UK Government's reputation of having a robust policy position on the non-payment of terrorist ransoms and countering-terrorist finance

This policy will further reinforce the UK's stance on the non-payment of terrorist ransoms. It will do this by making pay-outs on kidnap for ransom policies illegal where UK insurance companies have reason to suspect that an original ransom payment was made to an individual or group linked to a UK-proscribed terrorist group.

UK insurers would no longer reimburse payments covered by this legislation

Insurance firms claim they would not change their behaviour in response to this policy, as they currently refuse to reimburse a payment if there is a suspected link to a UK-proscribed terrorist or group for both legal and reputational reasons. This would suggest that they will not save money from repayments they otherwise would have made. However, there may be cases where this benefit is realised, offsetting the decrease in gross premium income to some extent.

E. Risks

UK insurers/reinsurers may lose business. Overseas insurers may be able to offer the same product as UK insurers but without this restriction. Based on consultation, we estimate that UK insurers/reinsurers' annual gross premium income from kidnap and ransom insurance policies to be between £60 and £160 million. This provision will not affect insurers' UK consumers as it is already illegal to pay a terrorist ransom in the UK. We do not know the proportion of kidnap and ransom clients accounted for by Non-UK consumers.

Insurance and reinsurance companies could claim they did not have reasonable grounds to suspect that the reinsurance payment covered a kidnap and ransom paid to a UK-proscribed terrorist. Consultation suggested that UK insurers, at least the most prominent companies, would be unlikely to try to get around this change due to reputational risk. However, if some companies are willing and able to do this, then this legislative change will result in a cost to UK business without benefit. The Home Office will work with HM Treasury and insurance regulators to help the sector enhance their due diligence processes.

Insurance companies may rely on information relayed to them by private security companies or response consultants. Much of the activity on a kidnap case is conducted on a confidential basis and therefore, it may be difficult to detect or ascertain the end recipient of the funds. However, a new offence on this issue would encourage insurance and reinsurance companies to test the reliability of information provided to them to avoid penalties.

Individuals or groups may use overseas insurance providers or still make ransom payments even if they cannot be reimbursed, and therefore the effect on disrupting terrorism will be limited.

If insurance companies were to leave the UK as a result of this change, then the costs could extend beyond the kidnap and ransom insurance market. For the 'key players' in the market, kidnap for ransom is likely to represent only a small proportion of their total portfolio. Hiscox stated in the 2013 version of its reports and accounts that kidnap and ransom, contingency and personal accident insurance made up 6% or £120 million of its total group controlled income. If there are advantages to staying in the UK or large costs to moving then insurers may be unlikely to do this given that kidnap and ransom insurance only makes up a small proportion of their portfolio. Therefore we assume that there is no impact on non-kidnap and ransom insurance products, although the risk of this cost exists.

We have assumed that the costs of investigating these cases to the National Crime Agency and Police will be negligible. We do not have data to confirm this and therefore there is a risk that this has been underestimated.

F. Implementation

The Government plans to implement these changes through the Counter-Terrorism and Security Bill, expected to be introduced to Parliament in 2014.

G. Monitoring and Evaluation

We will work with the Ministry of Justice to monitor the number of prosecutions under these amendments and the range of sentences handed down. The Home Office publishes quarterly statistical releases on the arrests and outcomes of proceedings under terrorism powers. As with any extension of counter-terrorism powers, we are mindful of the need to ensure that the new power remains necessary, proportionate and justified and intend to keep this power under review. The extension to territorial extent of these offences will fall within the statutory remit of David Anderson QC, as the incumbent Independent Reviewer of Terrorism Legislation.

We will also review the effect on the annual gross premium income of the UK kidnap and ransom insurance market through consultation. This would not only serve to judge the extent of any cost to the industry, but if the effect of this legislative change is minimal then this evidence could be used to encourage overseas governments, regulatory bodies and insurers to adopt a similar change.

H. Feedback

As part of his statutory functions to review the operation of the Terrorism Act 2000, which contains the terrorist financing provisions contained from sections 15-18, the Independent Reviewer of Terrorism Legislation, David Anderson QC, is required to report annually to Parliament and may make recommendations to the Government on the matters contained therein. The Government is required to provide a formal published response to all of the Independent Reviewer's reports.

The UK government could also consider using the evidence from evaluation to lobby for this change to be adopted internationally. In this way, it could achieve the objective of this proposal and minimise the costs to UK insurers.

ANNEX

Progression of cases through the CJS

A proxy offence³ has been used to estimate the flow of the new offence through the CJS. The following proxy was used:

- Section 17 of the Terrorism Act 2000 (“Funding Arrangements”) is comparable to the proposed offence.
- Section 17 makes it an offence for an individual to enter into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he has reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- It also carries the same maximum available sentences as the proposed new offence (6 months imprisonment for summary conviction, 14 years imprisonment for indictable conviction).
- Available data records this offence as part of a wider group of related offences; this could mean that case progression assumptions are driven by other offences. The volume of annual proceedings is small so an average over several years has been used.

Assumptions	Risks
<p>Proportion of cases tried in the magistrates’ vs. the Crown Court</p> <ul style="list-style-type: none"> • It is assumed that 22% of defendants are tried in the magistrates’ court. • It is assumed that 78% of defendants are tried in the Crown Court. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/14.</p>	<ul style="list-style-type: none"> • More cases will be tried in the Crown where the costs tend to be higher.
<p>Proportion of defendants found guilty</p> <ul style="list-style-type: none"> • It is assumed that 67% of defendants are convicted. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/14.</p>	<ul style="list-style-type: none"> • More defendants will be convicted than estimated.
<p>Disposals given:</p> <ul style="list-style-type: none"> • It is assumed that of those convicted, 100% of offenders are given a custodial sentence. <p>Average custodial sentence length (ACSL):</p> <ul style="list-style-type: none"> • It is assumed that the ACSL will be 52 months. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/4.</p>	<ul style="list-style-type: none"> • That the ACSL given is longer than estimated. • Offenders given less than 12 months in custody are not currently subject to supervision on release. Under the Offender Rehabilitation Act 2014 this will change but for the purposes of this IA we have based estimates of cost on current practice.
	<ul style="list-style-type: none"> • There is the risk that such policies,

³ It has not been possible to split this offence out from other similar offences under the same offence code classification; therefore the actual cost per case may in fact differ.

<ul style="list-style-type: none">• Our analysis does not take into account the possible interaction with other policies that have not yet been commenced.	once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.
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Cost assumptions	
<p>CPS costs, advocacy costs:</p> <ul style="list-style-type: none"> The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks). <p>Source: CPS 2014; MoJ internal analysis, 2014.</p>	<ul style="list-style-type: none"> The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): http://www.cps.gov.uk/publications/finance/abc_guide.pdf.
<p>HMCTS costs (magistrates):</p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits. The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits. Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity. The timings are collection of data from February 2009. Any difference in these timings could influence costings. The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimated.

	<ul style="list-style-type: none"> Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)). <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p>HMCTS costs (crown):</p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2013/14 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that the costings are an underestimate. The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences. <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.
<p>Legal Aid Costs:</p> <p><i>Cases in the magistrates court</i></p> <ul style="list-style-type: none"> It is assumed that the eligibility rate for legal aid in the magistrates' court is 50%. 	<p><i>Magistrates court</i></p> <ul style="list-style-type: none"> Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings. More than one defendant prosecuted

<ul style="list-style-type: none"> The average cost per case is £485, and that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014 (Main tables, table 2.3). <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> It is assumed that the eligibility rate for legal aid is 100%. The average cost per defendant is around £6,600 in 2013/14 prices We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2013/14 data as a proxy for the cost per defendant. <p>Source: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</p>	<p>per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</p> <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary. There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.
<p>Prison costs:</p> <ul style="list-style-type: none"> We assume that an offender serves half of their given custodial sentence: This means it is assumed that offenders will on average serve 26 months in prison. The cost per prison place is approximately £28,000. <p>Source: NOMS management accounts addendum (2012/13).</p>	<ul style="list-style-type: none"> The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.
<p>Probation costs:</p> <p>Post release licence costs:</p> <ul style="list-style-type: none"> It is assumed that post release probation costs are approximately £2,700 per year in 2013/14 prices. 	<ul style="list-style-type: none"> We have based our estimates on current practice. However the Offender Rehabilitation Act 2014 includes provisions to introduce post release licence conditions for offenders given a custodial sentence of less than 12 months.

Independent probation costs:

- Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices.
- The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and updated in line with the GDP deflator of 1.84% (<https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts>).

Source: MoJ internal analysis, 2013/14.

- After the commencement of these provisions, there will be costs associated with post release licence for offenders convicted of this offence who are sentenced to immediate custody. The wider costs of extending post-release supervision to any offenders released from short custodial sentences will be met through savings realised from the Transforming Rehabilitation reforms to probation services.