

<p>Title: Murder Sentencing – a consultation on the starting point for determination of the minimum term in relation to the mandatory life sentence for murder, for cases preceded by controlling or coercive behaviour against the murder victim and cases involving the use of a knife or other weapon.</p> <p>IA No: MOJ067/2023</p> <p>RPC Reference No: N/A</p> <p>Lead department or agency: Ministry of Justice (MoJ)</p> <p>Other departments or agencies: N/A</p>	Impact Assessment (IA)			
	Date: 27 November 2023			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Consultation			
Contact for enquiries: sarah.clutterbuck@justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£258.0m	N/A	N/A	N/A

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

The Government commissioned Clare Wade KC to review sentencing in domestic homicide cases to establish whether current law and sentencing guidelines are fit for purpose and to identify options for reform. The Government’s response to the Domestic Homicide Sentencing Review (DHSR) announced a package of proposed reforms. Since then, some have argued that these changes do not go far enough, in terms of the impact that the changes would have in determination of the minimum term (tariff) in relation to mandatory life sentence for murder. We recognise that there are other options which would benefit from further consideration, beyond the recommendations made in the review. We are therefore launching this consultation to ensure that all options for reform have been fully explored, to ensure that sentencing in these cases is commensurate with the severity of the crime.

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

This consultation explores additional options to ensure that the sentencing framework fully reflects the seriousness of domestic murders and all murders committed with a knife or weapon. This consultation is seeking views on a minimum term starting point for (i) cases of murder preceded by controlling or coercive behaviour against the murder victim, and (ii) all murders committed with a knife or weapon. This is to ensure that all options for reform have been fully explored, to ensure that sentencing in these cases is commensurate with the severity of the crime. The views collected through this consultation will help inform whether any further reform is required, beyond that which has already been committed to in response to the DHSR.

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

- **Option 0** - Do not consult: Under this option no additional changes would be considered, beyond the legislation that has already been committed to in response to the DHSR.
- **Option 1** - Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which:
 - a) Is higher than the baseline starting point of 15-years.
 - b) Only applies to cases where the controlling or coercive behaviour was of a high level of seriousness.
- **Option 2** - Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other weapon which:
 - a) Is higher than the baseline starting point of 15-years.
 - b) Is disappplied in cases where a victim of abuse has killed their abuser.

Government intervention via legislation would be required to implement Options 1 and 2.
As a consultation, there are no preferred options at this stage.

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

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

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1A

Description: Option 1A - Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which is higher than the baseline starting point of 15-years.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 40 years	Net Benefit (Present Value (PV)) (£m)		
			Low: -£25.0m	High: -£103.8m	Best Estimate: -£53.5m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£19.7m	£4.2m	£25.0m
High	£81.8m	£17.3m	£103.8m
Best Estimate	£42.1m	£8.9m	£53.5m

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

Implementing Option 1A could increase the length of the minimum term (tariff) for relevant murder cases and is therefore expected to have prison place impacts. For a 25-year starting point, it is estimated that an additional 68 to 282 prison places would be required in steady state, with a transition cost of £19.7m to £81.8m to construct and an ongoing annual cost of £4.2m to £17.3m to run once these places are all in use. If implemented, impacts would be expected to start to be felt from around 2045, with steady state reached around 2062. To cover the estimated impact of this option, we have produced a 40-year NPC, which ranges from £25.0m to £103.8m for HMPPS - prisons, with a best estimate of £53.5m.

Estimated prison place impacts for an alternative 20-year starting point would be between 34 to 141 additional prison places, with a 40-year NPC of £13.7m to £56.7m for HMPPS – prisons.

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

Option 1A may create the following non-monetised costs:

- HMPPS-Prison Service: There is a risk that offenders spending longer in prison may compound prison capacity and overcrowding pressures, which may also reduce access to rehabilitative resources and potentially increase prison instability, self-harm and violence.
- Families of Offenders: A longer time in custody may strain familial and community links, limit offender motivation for reengagement in rehabilitation.

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

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

It has not been possible to quantify the benefits for Option 1A.

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

Option 1A may improve public protection and public confidence in the justice system to respond proportionally and effectively to cases of domestic murder. This is being explored via the consultation options covered in this IA.

Key assumptions/sensitivities/risks	Discount rate	3.5%
Assumptions on the prevalence of CCB have been made for intimate partner murders and familial murders based on a case file review of intimate partner homicides and expected relative prevalence in other types of murder. A low, best and high estimate are used to reflect the uncertainty in prevalence estimates.		
Assumptions on the change to tariff length due to the higher starting point proposed have also been made. As sentencing in individual cases is a matter for the independent judiciary, these assumptions are highly uncertain.		

BUSINESS ASSESSMENT (Option 1A)

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

Summary: Analysis & Evidence

Policy Option 2B

Description: Option 1B - Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which only applies to cases where the controlling or coercive behaviour was of a high level of seriousness.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 40 years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£25.0m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	£19.7m		£4.2m	£25.0m

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

Implementing Option 1B could increase the tariff length for relevant murder cases and is therefore expected to have prison place impacts. For a 25-year starting point, it is estimated that an additional 68 prison places would be required in steady state, with a transition cost of £19.7m to construct and an ongoing annual cost of £4.2m to run once these places are all in use. If implemented, impact would be expected to start to be felt from around 2045, with steady state reached around 2062. To cover the estimated impact of this option, we have produced a 40-year NPC, which is £25.0m for HMPPS - prisons.

Estimated prison place impacts for an alternative 20-year starting point would be 34 additional prison places, with a 40-year NPC of £13.7m for HMPPS – prisons.

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

Option 1B may create the following non-monetised costs:

- HMPPS-Prison Service: There is a risk that offenders spending longer in prison may compound prison capacity and overcrowding pressures, which may also reduce access to rehabilitative resources and potentially increase prison instability, self-harm and violence.
- Families of Offenders: A longer time in custody may strain familial and community links, and limit offender motivation for reengagement in rehabilitation.

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

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

It has not been possible to quantify the benefits for Option 1B.

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

Option 1B may improve public protection and public confidence in the justice system to respond proportionally and effectively to cases of domestic murder. This is being explored via the consultation options covered in this IA.

Key assumptions/sensitivities/risks

Discount rate

3.5%

Assumptions on the prevalence of murder cases where the CCB was of a high level of seriousness have been made for intimate partner murders and familial murders based on a case file review of intimate partner homicides and expected relative prevalence in other types of domestic murders. This equates to the low estimate for Option 1A. We have also assumed a change in tariff length due to the higher starting point proposed by this option. As sentencing in individual cases is a matter for the independent judiciary, these assumptions are uncertain.

BUSINESS ASSESSMENT (Option 2B)

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

Summary: Analysis & Evidence

Policy Option 2A

Description: Option 2A - Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other a weapon, which is higher than the baseline starting point of 15-years.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 40 years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£204.5m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	N/A		
High	N/A		N/A	N/A
Best Estimate	£142.7m		£30.1m	£204.5m

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

Implementing Option 2A could increase the tariff length for relevant murder cases and is therefore expected to have prison place impacts. For a 25-year starting point, it is estimated that an additional 492 prison places could be required in steady state, with a transition cost of £142.7m to construct and an ongoing annual cost of £30.1m to run once these places are all in use. If implemented, impact would be expected to start to be felt from around 2043, with steady state reached around 2057. The 40-year NPC is £204.5m for HMPPS - prisons.

Estimated prison place impact for an alternative 20-year starting point would be 246 additional prison places, with a 40-year NPC of £111.1m for HMPPS – prisons.

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

Option 2A may create the following non-monetised costs:

- HMPPS-Prison Service: There is a risk that offenders spending longer in prison may compound prison capacity and overcrowding pressures, which may also reduce access to rehabilitative resources and potentially increase prison instability, self-harm and violence.
- Families of Offenders: A longer time in custody may strain familial and community links, limit offender motivation for reengagement in rehabilitation.

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

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

It has not been possible to quantify the benefits for Option 2A.

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

Option 2A may improve public protection and public confidence in the justice system to respond proportionally and effectively to all cases of murder committed with a knife or other weapon. This is being explored via the consultation options covered in this IA.

Key assumptions/sensitivities/risks	Discount rate	3.5%
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Assumptions on the prevalence of murders committed with a weapon that would be impacted by this option are based on two case file reviews: one of intimate partner homicides and a smaller review of murder cases in 2022 to inform the assumptions for non-domestic murder. Sensitivity analysis was used to test the highly uncertain assumption for non-domestic murders.

We have also assumed a change in tariff length due to the higher starting point proposed by this option. As sentencing in individual cases is a matter for the independent judiciary, these assumptions are highly uncertain.

BUSINESS ASSESSMENT (Option 2A)

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

Summary: Analysis & Evidence

Policy Option 2B

Description: Option 2B – Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other weapon, which is higher than the baseline starting point of 15-years, but which is disapplied in cases where a victim of abuse has killed their abuser.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2024/25	Time Period 40 years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£199.1m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£138.9m	£29.3m	£199.1m

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

Implementing Option 2B could increase the tariff length for relevant murder cases and is therefore expected to have prison place impacts. For a 25-year starting point, it is estimated that an additional 479 prison places would be required in steady state, with a transition cost of £138.9m to construct and an ongoing annual cost of £29.3m to run once these places are all in use. If implemented, impact would be expected to start to be felt from around 2043, with steady state reached around 2057. The 40-year NPC is £199.1m for HMPPS - prisons.

Estimated prison place impact for an alternative 20-year starting point would be 240 additional prison places, with a 40-year NPC of £108.3m for HMPPS – prisons.

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

Option 2B may create the following non-monetised costs:

- HMPPS-Prison Service: There is a risk that offenders spending longer in prison may compound prison capacity and overcrowding pressures, which may also reduce access to rehabilitative resources and potentially increase prison instability, self-harm and violence.
- Families of Offenders: A longer time in custody may strain familial and community links, limit offender motivation for reengagement in rehabilitation.

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

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

It has not been possible to quantify the benefits for Option 2B.

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

Option 2B may improve public protection and public confidence in the justice system to respond proportionally and effectively to all cases of murder committed with a knife or other weapon. This is being explored via the consultation options covered in this IA.

Key assumptions/sensitivities/risks	Discount rate	3.5%
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Assumptions on the prevalence of murder cases committed with a weapon that would have the higher starting point disapplied was based on a case file review of intimate partner homicides and an assumed relative prevalence for familial domestic murders. Otherwise, assumptions were as per Option 2A. We have also assumed a change in tariff length due to the higher starting point proposed by this option. As sentencing in individual cases is a matter for the independent judiciary, these assumptions are highly uncertain.

BUSINESS ASSESSMENT (Option 2B)

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

Evidence Base

A. Background

1. In 2021 the Government commissioned an independent expert, Clare Wade KC, to review sentencing in domestic homicide cases to establish whether current law and sentencing guidelines are fit for purpose and to identify options for reform. The Government published its full response on 20 July 2023. This response included a package of proposed reforms to change the law so that the sentencing framework for murder reflects the seriousness of domestic homicide. The package of measures includes legislative changes to give domestic murders specialist consideration in the sentencing framework for murder:
 - i. A history of controlling or coercive behaviour by the perpetrator against the victim will be a statutory aggravating factor.
 - ii. A history of controlling or coercive behaviour by the victim against the perpetrator will be a statutory mitigating factor.
 - iii. Violence which amounts to overkill will be a statutory aggravating factor.
 - iv. Murders connected to the end of a relationship, or the victim's intention to end a relationship, will be a statutory aggravating factor.
2. These measures implement recommendations made in the DHSR. However, there are additional options which would benefit from further consideration, beyond the recommendations made in the DHSR. Therefore, this consultation, which this Impact Assessment (IA) supports, is seeking views on a minimum term starting point for (i) cases of murder preceded by controlling or coercive behaviour against the murder victim, and (ii) all murders committed with a knife or weapon.
3. This consultation is being launched so that all options for reform in this area have been fully explored. The views collected through this consultation will help inform whether any further reform to the sentencing framework is required, beyond that which has already been committed to in response to the DHSR.
4. To support this aim, this IA explains the policy rationale and objectives for the issues included in the consultation. It then provides an overview of the estimated effect of each option on society, including both the monetised and non-monetised impacts.

Schedule 21

5. The sentencing framework for murder is contained at Schedule 21 to the Sentencing Act 2020.
6. Schedule 21 sets out the principles which the court must have regard to when assessing the seriousness of all cases of murder, including domestic murders, to determine the appropriate tariff to be imposed. Schedule 21 contains a range of starting points for determination of the tariff. Based on the circumstances of the offence, the starting points for adult offenders are 15 years, 25 years, 30-years or a whole life order.
7. Offenders who are under 18 when they commit murder face a sliding scale of starting points ranging from 8 to 27 years, depending on the age of the offender when the offence was committed and the seriousness of the offence.
8. Schedule 21 also contains statutory aggravating and mitigating factors to be considered, although this list is not exhaustive.

Controlling or Coercive Behaviour

9. Cases of domestic murder are rarely isolated incidents and are often the culmination of years of abuse; abuse which is often underpinned by coercion and control. In the majority of cases, this abuse has been committed by the perpetrator of the murder against the victim. A minority of cases, however, involve a victim of abuse who has killed their abuser. In most of these cases, the victim of the abuse who has killed their abuser is a woman.

10. Until now there has been no recognition within Schedule 21 of the seriousness of the preceding abuse that is so common in domestic cases. Clare Wade KC therefore recommended the addition of a statutory aggravating factor to Schedule 21 for cases where there is a history of controlling or coercive behaviour by the perpetrator against the victim, and a statutory mitigating factor to Schedule 21 for cases where there is a history of controlling or coercive behaviour by the victim against the perpetrator. In the Government's response to the DHSR, we committed to make these changes and on 23 October a Statutory Instrument was laid to introduce the legislation. The estimated impacts of these measures are set out in the IA accompanying the Statutory Instrument.
11. Some have argued that these changes do not go far enough, in terms of the impact that the statutory aggravating factor would have in determination of the minimum term (tariff) in relation to mandatory life sentence for murder. We recognise that there are other options which would benefit from further consideration, beyond the recommendations made in the review. We are therefore launching this consultation, seeking views on whether there should be a higher starting point for murders preceded by controlling or coercive behaviour against the victim, to ensure that all options for reform have been fully explored and that sentencing in these cases is commensurate with the severity of the crime.

Use of a weapon

12. Schedule 21 generally defines the seriousness with which a murder should be considered in sentencing by the circumstances in which the killing took place, as opposed to the means by which death was caused. There are two exceptions to this, where seriousness in Schedule 21 is ascribed according to the method of killing. The 30-year starting point applies to murders involving the use of a firearm or explosive, and the 25-year starting point applies to murders where a weapon used was taken to the scene with intent.
13. Concerns have been raised that Schedule 21 does not include a specific starting point for all other murders which are committed with a knife or other weapon. This concern has particular relevance to cases of domestic murder, which more commonly take place within a home and therefore if a weapon is used, often a kitchen knife, it is likely to have already been at the scene, and therefore the 25-year starting point would not apply.
14. This issue was considered in the DHSR and the legislation we have introduced and committed to introduce in response to this will give domestic murders specialist consideration in Schedule 21 for the first time.
15. Some have argued that these changes do not go far enough and that an unfair difference remains between the starting points for murders committed with a knife or weapon taken to the scene with intent (25 years) and all other murders committed with a knife or other weapon (normally 15 years, except for murders involving firearms). We are therefore seeking views on whether there should be a starting point for all other cases of murder committed with a knife or other weapon, to eliminate or reduce this difference and ensure that sentencing in these cases is commensurate with the severity of the crime.

B. Rationale and Policy Objectives

Rationale

16. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way the markets operate or there are strong enough failures in existing Government interventions where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to certain groups in society).
17. The options under consideration in this IA have an equity rationale: to ensure that perpetrators of murders which are preceded by controlling or coercive behaviour against the victim receive sentences which are commensurate with the severity of the crime, by seeking views on a starting point for such cases, above the baseline starting point of 15-years. Also, reducing or eliminating the difference in starting point for murders committed with a knife or weapon which has been taken to the

scene with intent and that which would normally apply to all other murders committed with a knife or weapon, may also have an equity rationale.

18. The rationale for intervention also includes public protection: these additional options for giving domestic murders and murders committed with a knife or weapon specialist consideration in the sentencing framework may provide greater public protection and increase public confidence in the justice system. This consultation is being launched so that all options for reform in this area have been fully explored.

Policy objective

19. The associated policy objective is to explore additional options to ensure that the sentencing framework fully reflects the seriousness of domestic murders and all murders committed with a knife or other weapon. The consultation is seeking views on a minimum term starting point for:
- i. cases of murder preceded by controlling or coercive behaviour against the murder victim, and
 - ii. all murders committed with a knife or weapon.
20. It is being launched so that all options for reform in this area have been fully explored, to ensure that sentencing in these cases is commensurate with the severity of the crime. The views collected through this consultation will help inform whether any further reform to the sentencing framework is required, beyond that which has already been committed to in response to the DHSR.

C. Affected Stakeholder groups, organisations and sectors

21. A list of the main groups and stakeholders who would be affected by the options described in this IA is shown below:
- Families of victims
 - Offenders and their families
 - The public
 - HM Prison and Probation Service of England and Wales, Prison Service (HMPPS-Prison Service).

D. Description of options considered

22. The following options are considered in this IA:
- **Option 0:** Do not consult: Under this option, no additional changes would be considered, beyond the legislation that has already been committed to in response to the DHSR.
 - **Option 1:** Consult on amending Schedule 21 by creating a starting point for murder cases preceded by a history of controlling or coercive behaviour against the murder victim which:
 - A. Is higher than the baseline starting point than 15-years.
 - B. Only applies to cases where the controlling or coercive behaviour was of a high level of seriousness.
 - **Option 2:** Consult on amending Schedule 21 by creating a starting point for all murders with a knife or other weapon which:
 - A. Is higher than the baseline starting point of 15-years.
 - B. Is disapplied in cases where a victim of abuse has killed their abuser.
23. As a consultation, there is no preferred option at this stage. Although for the purposes of this IA the impacts of each option are considered separately, they are not mutually exclusive.

Option 0

24. Under this option, no additional changes would be considered, beyond the legislation that has already been introduced and committed to in response to the DHSR. The impact of the legislation that has already been introduced as set out in the accompanying IA.¹

Option 1

25. This consultation explores additional options to ensure that the sentencing framework fully reflects the seriousness of domestic murders, beyond the legislation that has already been introduced and committed to in response to the DHSR.

26. Option 1 therefore consults on amending Schedule 21 further by creating a starting point for murder cases with a history of controlling or coercive behaviour against the victim, but also considers whether this should apply to all such cases or only those where such behaviour was of a high level of seriousness. In many cases, it is likely that this option would result in the imposition of a higher tariff than application of a statutory aggravating factor (Option 0) for the relevant murder cases.

Option 2

27. The consultation explores additional options to ensure that the sentencing framework fully reflects the seriousness of all murders committed with a knife or other weapon, beyond the legislation that has already been introduced and committed to in response to the DHSR.

28. Option 2 therefore consults on amending Schedule 21 further by creating a starting point for all murders committed with a knife or weapon, but also considers whether this should be disapplied in cases where a victim of abuse has killed their abuser.

29. This option would reduce or eliminate the difference in the starting point for murders committed with a knife or weapon taken to the scene with intent (25 years) and the starting point that would normally apply to all other murders committed with a knife or weapon (15 years, except for murders involving firearms).

E. Cost and Benefit Analysis

30. This overarching IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.²

31. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration.

32. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

33. All the cost estimates in this IA have been assessed using HM Treasury guidance. To make our estimates for each option comparable, we have adopted the following conventions:

- Monetised costs and benefits are stated in current, that is 2023/24, prices.
- The Net Present Value (NPV) of each option has been calculated for a forty-year period starting in 2024-25. This period is used because the impacts would not start to be felt or reach steady state for many years (due to the existing length of tariffs for murder). A discount rate of 3.5 per cent has been applied; and then a 3 per cent discount rate for impacts beyond 30-years' time.
- Costs are rounded to the nearest hundred thousand.

¹ The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 - Impact Assessment

- Where appropriate, 20% optimism bias has been applied to future costs.
 - Unless otherwise stated, the annualised costs or savings are those which would be achieved in 'steady state' (i.e., when the option is fully in operation).
34. All the costs and benefits below are estimates, based on a range of assumptions set out in Table 5 (see section F below). It is very difficult to estimate accurately over a 40-year timeframe. This means all costs and benefits are subject to change as the impacts would not start to be felt or reach steady state for many years and the value of the costs and benefits are likely to change over time. This is particularly the case for costs of construction and operating a prison place. There may also be feasibility concerns in meeting the increased demand through new supply.
35. As is the case in all MoJ IAs, the impact on offenders of changes to the sentencing framework and spending a longer period of time in custody are not included. However, it is possible that changes in sentencing may have impacts on the offender after release or on their families and other dependents.

Data & Methods

Data Sources

36. Domestic homicides are recorded as murder or manslaughter offences in court data and MoJ sentencing statistics, therefore it is not possible to identify domestic homicides as a subset. Likewise, data on the sentencing starting point and circumstances of a murder, including a history of controlling or coercive behaviour and whether a weapon used was from or taken to the scene, is not centrally held. The following bespoke case file reviews and published reports have therefore been the main sources of evidence used to inform the estimates in this IA.
37. **A case review of intimate partner domestic homicide sentencing remarks.** The sentencing remarks of a sample of 120 cases of domestic homicide between 2018 and 2020 where the victim was a partner or ex-partner of the offender were analysed to inform the Domestic Homicide Sentencing Review (summarised at Appendix D of the report).² This included collating data on the offence sentenced for, tariff length, aggravating and mitigating factors, as well as factors particularly relevant to the DHSR and this IA: controlling or coercive behaviour and use of a weapon.
38. This case file review has therefore been instrumental in informing the impacts and analysis in this IA, including further analysis for the consultation and the accompanying equalities statement. However, there are key limitations to note with the data collated from the case file review:
- There is no guarantee that every relevant case from the period reviewed has been identified, though this was the intention. Comparing the numbers included in the case file review to published homicide statistics suggests the case file is an undercount.
 - Sentencing remarks are, by their nature, a summary of how the sentence was reached and are not a full representation of the case. As such, findings are limited to what has specifically been mentioned in the remarks.
 - Controlling or coercive behaviour is often overlooked and under reported. Therefore, the prevalence estimates may be an underestimate.
39. For these reasons, the findings from the sentencing remarks analysis are considered indicative.
40. **A case review of sentencing remarks for murder cases in 2022.** In total, 71 sentencing remarks were reviewed for murder cases sentenced in 2022, comprising of 51 published sentencing remarks and a sample of 20 sentencing remarks from the Central Criminal Court.
41. The data collated from this review is not routinely centrally available and included collating data on the relevant minimum term starting point, tariff length, use of a weapon and whether the weapon was from or taken to the scene with intent. This provided data on non-domestic cases which were not included in the intimate partner domestic homicide case file review conducted for the DHSR. Of the

² Appendix D, Domestic Homicide Sentencing Review - GOV.UK (www.gov.uk)

71 sentencing remarks reviewed, 59 were non-domestic murder cases, made up of 39 published sentencing remarks and a sample of 20 from the Central Criminal Court.

42. This review has therefore been instrumental in informing the impacts and analysis in this IA. However, there are key limitations to note with the data collated from this review:
- Due to time constraints, the review was limited to published sentencing remarks and a smaller sample of cases from the Central Criminal Court. At the discretion of the sentencing judge, the sentencing remarks for high-profile cases may be published on the judiciary.uk website.³ Published remarks are therefore highly unlikely to be representative of murder cases given their high-profile nature. Although an additional sample of remarks was reviewed from the Central Criminal Court, again these may not be representative as of cases heard at all courts across the country. Therefore, data from this review is highly indicative.
 - Sentencing remarks are, by their nature, a summary of how the sentence was reached and are not a full representation of the case. As such, findings are limited to what has specifically been mentioned in the remarks.
43. However, this was the best available data to inform the assumptions for Option 2A-B. See Table 5 for more detail on the assumptions and their risks and uncertainties.
44. **Homicides in England and Wales statistics.** Statistics on homicides based on extracts from the Home Office Homicide Index (HOHI) are published by the ONS.⁴ The HOHI contains detailed record-level information about each homicide recorded by police in England and Wales. Whilst a robust source of data, the ONS figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.
45. As the case file sample did not include all intimate partner homicides in the period (despite our intention and best efforts to do so), these published homicides statistics were used to calculate the average number of intimate partner domestic homicides. These statistics have also been used to calculate the average number per year of familial domestic homicides and non-domestic homicides in the last five years (from the start of April 2017 to the end of March 2022, see assumption in Table 5).
46. **'Domestic Homicides and Suspected Victim Suicides During the Covid-19 Pandemic 2020-2021'**.⁵ This report, published by the Home Office, Vulnerability Knowledge and Practice Programme, and the National Police Chiefs Council and College of Policing, looked at domestic abuse related deaths that occurred between March 23rd 2020, and 31st March 2021.
47. Findings included data on the prevalence of suspects known to the police for controlling or coercive behaviour in intimate partner homicides (30%) and adult family homicides (14%) which has been used to inform assumptions for familial domestic murders. The project was reliant on police records to identify domestic abuse related deaths, although this limitation is most relevant to suspected victim suicide data which has not informed this IA.

Methods

Option 1A-B

48. In line with the methodology used for the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 Impact Assessment,⁶ the case file review of intimate partner domestic homicide cases was used to inform estimates on the prevalence of controlling or coercive behaviour by the perpetrator against the victim. Assumptions on the relative prevalence of these factors in familial domestic murders were based on published findings on the prevalence of controlling or coercive behaviour in each of these types of murder (see paragraphs 46-47).
49. As controlling or coercive behaviour will only apply in domestic cases, it was assumed that Options 1A-B would not apply to non-domestic murder cases. Given the uncertainty around these

³ [Judgments Archive - Courts and Tribunals Judiciary](#)

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

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

⁶ [The Sentencing Act 2020 \(Amendment of Schedule 21\) Regulations 2023 - Impact Assessment](#)

assumptions, the assumed prevalence of these factors was varied to provide a low, best and high estimate (see Table 5).

50. As legislation has been introduced to make controlling or coercive behaviour against the victim a statutory aggravating factor, the 'do nothing' baseline reflects the estimated impact of this new aggravating factor. Therefore, as set out in Table 5, assumptions were made on the impact that a higher starting point would have on the tariff length for relevant cases of murder beyond that already estimated for the statutory aggravating factor.⁷
51. As the consultation seeks views on what a higher starting point, if any, should be, estimates were produced for a 25-year starting point and 20-year starting point for the purposes of this IA. As set out at paragraphs 12-15, there is currently a 25-year starting point for murders committed with a knife or weapon taken to the scene with intent, and the baseline starting point of 15-years will normally apply to all other murders committed with a knife or weapon (except firearms cases).
52. In the DHSR case file review, murders committed with a weapon which was taken to the scene with intent, and which had a 25-year starting point had an average tariff length of 24.5 years. All other murders committed with a weapon, and which had a 15-year starting point had an average tariff length of 19.0 years. Therefore, although there is a 10-year difference in the starting point for these types of murder, the application of aggravating and mitigating factors means that the difference in the average tariff length is 5.5 years. A similar difference in average tariff length - 5 years – was seen in the case file review of non-domestic murder cases.
53. Based on this, it was assumed that for cases with a 15-year starting point (or 12-years for perpetrators who were under 18) that a higher starting point of 25 years would, on average, increase tariff lengths by 5 years and that a higher starting point of 20 years would, on average, increase tariff lengths by half that amount, so 2.5 years. No impact was assumed for cases that already had a starting point of 25 years, 30 years or a whole life order.
54. The low estimate was based on the prevalence of controlling or coercive behaviour against the victim which had been identified in the domestic homicide case review as having been treated as an aggravating factor, with a relative prevalence applied to familial domestic murders. These cases were assumed to be those where the controlling or coercive behaviour was of a high level of seriousness and therefore equate to estimated impacts for Option 1B.
55. These estimates are based on the analysis of the available data (paragraphs 36 – 47). However, sentencing in individual cases is a matter for the independent judiciary. Sentencing decisions are based on all the circumstances of a case. As such, it is not possible to precisely estimate the impact of a higher starting point.
56. Whilst changes to the sentencing framework for murder will also impact on starting points applied to under-18s, the length of existing minimum terms for life sentences means that costs and impacts from this option will only apply to the adult prison estate.
57. See Table 5 for further detail on the assumptions used in these impact estimates.

Option 2A-B

58. For option 2, domestic and non-domestic murders were considered separately. Data from the case file review of intimate partner domestic murders was used to inform the assumption on the prevalence of domestic murders where the use of a knife or weapon would be impacted by Option 2. For non-domestic murder cases, the same assumption was based on the review of sentencing remarks for murder cases in 2022.
59. A greater proportion of domestic murders involved the use of a knife or weapon which had not been taken to the scene with intent (58% of murder cases; 80% of the 65 murder cases where a weapon was used) than non-domestic murders (10% of murder cases; 15% of the 41 murders where a weapon was used). This was largely because a greater proportion of non-domestic murders involved

⁷ Ibid.

the use of a knife or weapon which had been taken to the scene with intent. As set out in Table 5, these assumptions are uncertain, particularly for non-domestic murders given the sample is likely skewed towards high-profile cases (see 37-42).

60. Based on the approach set out above for Option 1 (see 51-53), it was assumed that for cases with a 15-year starting point, a higher starting point of 25 years would, on average, increase tariff lengths by 5 years and that a higher starting point of 20 years would, on average, increase tariff lengths by half the amount, so 2.5 years. This is due to our analysis showing (see 52) that although there is 10-year difference between the 15-year and 25-year starting points, for the relevant cases analysed the application of aggravating and mitigating factors means that the difference in the average tariff length is around 5 years.
61. For Option 2B, based on the domestic homicide case file review, it was assumed that 2% of intimate partner domestic murders were cases where a victim of abuse had killed their abuser, and a relative proportion was applied to familial domestic murders. These cases were assumed to have the higher starting point disapplied. Otherwise, the methodology was as for Option 2A.
62. These estimates are based on analysis of the available data (paragraphs 36-47). However, sentencing in individual cases is a matter for the independent judiciary. Sentencing decisions are based on all the circumstances of a case. As such, it is not possible to precisely estimate the impact of a higher starting point.
63. As for Option 1, whilst changes to the sentencing framework for murder will also impact on starting points applied to under-18s, the length of existing minimum terms for life sentences means that costs and impacts from this option will only apply to the adult prison estate.
64. See Table 5 for further detail on the assumptions used in these impact estimates.

Option 1A: Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which is higher than the baseline starting point of 15-years.

Costs of Option 1A

Monetised costs

HMPPS – Prisons

65. Option 1A could increase the tariff length for relevant murder cases and is therefore expected to have prison place impacts. This will depend on the specific higher starting point applied. For the purposes of this IA, estimated impacts are provided for a higher starting point of 20-years and 25-years based on the assumptions set out in Table 5.

20-year starting point

66. For a 20-year starting point, it is estimated that an additional 34 to 141 prison places would be required in steady state, with a transition cost of £9.9m to £40.9m to construct and an ongoing annual cost of £2.1m to £8.6m to run once these places are all in use.
67. Due to the existing tariff lengths given for murder, impact from Option 1A for a 20-year starting point would not be expected to start to be felt until around 2045, with steady state not being reached until around 2060.
68. To cover the estimated impact of this option, we have produced a 40-year NPC, which ranges from £13.7m to £56.7m for HMPPS - prisons, with a best estimate of £29.3m.

25-year starting point

69. For a 25-year starting point, it is estimated that an additional 68 to 282 prison places would be required in steady state, with a transition cost of £19.7m to £81.8m to construct and an ongoing annual cost of £4.2m to £17.3m to run once these places are all in use.

70. Due to the existing tariff lengths given for murder, impact from Option 1A for a 25-year starting point would not be expected to start to be felt until around 2045, with steady state not being reached until around 2062.

71. To cover the estimated impact of this option, we have produced a 40-year NPC, which ranges from £25.0m to £103.8m for HMPPS - prisons, with a best estimate of £53.5m.

Wider Criminal Justice System

72. As legislation has already been introduced to make controlling or coercive behaviour a statutory aggravating factor, no further costs beyond those set out in the IA for the Statutory Instrument⁸ are expected for the police, CPS, HMCTS or LAA.

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

Non-monetised costs

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

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

Benefits of Option 1A

Monetised benefits

75. It has not been possible to quantify any of the benefits expected from Option1A.

Non-monetised benefits

76. This consultation explores additional options to ensure that the seriousness of domestic murders and the particular harms that arise in these cases is recognised in the sentencing framework. This is to increase both public protection and public confidence in the justice system. We are launching this consultation to ensure that all options for reform in this area have been explored, further to the legislation we have already introduced/ committed to introduce to implement recommendations made in the Domestic Homicide Sentencing Review.

Option 1A Summary

77. Table 1 below summarises the estimated prison place impacts for a 20-year starting point and 25-year starting point for a low, best and high estimate for Option 1A and Table 2 below shows the 40-year NPV for each of these starting points and estimates.

Table 1: Estimated prison place impact of Option 1A at steady state, by potential higher starting point

Starting point	Low estimate	Best estimate	High estimate
20-year starting point	34	73	141
25-year starting point	68	145	282

⁸ The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 - Impact Assessment

Table 2: 40-year NPV for Option 1A by low, best and high estimate and potential higher starting point

Starting point	40-year NPV		
	Low estimate	Best estimate	High estimate
20-year starting point	-£13.7m	-£29.3m	-£56.7m
25-year starting point	-£25.0m	-£53.5m	-£103.8m

Option 1B: Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which only applies to cases where the controlling or coercive behaviour was of a high level of seriousness.

Costs of Option 1B

Monetised costs

78. For the purposes of this IA, cases where the controlling or coercive behaviour was of a high level of seriousness are assumed to reflect the cases in the domestic homicide case file review where such behaviour against the victim was identified as being considered as an aggravating factor, with a relative prevalence applied to familial domestic murders. This equates to the low estimate for Option 1A (see Table 5) as summarised in tables 1 and 2 above.

HMPPS – Prisons

20-year starting point

79. For a 20-year starting point, it is estimated that an additional 34 prison places would be required in steady state, with a transition cost of £9.9m to construct and an ongoing annual cost of £2.1m to run once these places are all in use.

80. Due to the existing tariff lengths given for murder, impact from Option 1A for a 20-year starting point would not be expected to start to be felt until around 2045, with steady state not being reached until around 2060. The 40-year NPC is estimated to be £13.7m for HMPPS - prisons.

25-year starting point

81. For a 25-year starting point, it is estimated that an additional 68 prison places would be required in steady state, with a transition cost of £19.7m to construct and an ongoing annual cost of £4.2m to run once these places are all in use.

82. Due to the existing tariff lengths given for murder, impact from Option 1A for a 25-year starting point would not be expected to start to be felt until around 2045, with steady state not being reached until around 2062. The 40-year NPC is estimated to be £25.0m for HMPPS - prisons.

Non-monetised costs

83. As for Option 1A (see 72).

Benefits of Option 1B

Monetised benefits

84. It has not been possible to quantify any of the benefits expected from Option 1B.

Non-monetised benefits

85. Our overarching policy aim is to ensure that the seriousness of domestic murders and the particular harms that arise in these cases is recognised in the sentencing framework. This in turn increases public protection and public confidence in the justice system to respond proportionally and effectively to cases of domestic murder. We are launching this consultation to ensure that all options for reform in this area have been explored, further to the reforms we have already introduced/ committed to introduce as part of the Government response to the Domestic Homicide Sentencing Review.

Option 2A: Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other a weapon, which is higher than the baseline starting point of 15-years.

Costs of Option 2A

Monetised costs

HMPPS – Prisons

86. Option 2A could increase the tariff length for relevant murder cases and is therefore expected to have prison place impacts. As for Option 1, this will depend on the specific higher starting point applied. For the purposes of this IA, estimated impacts for a higher starting point of 20-years and 25-years have been produced based on the assumptions set out in Table 5.

A 20-year starting point

87. For a 20-year starting point, it is estimated that an additional 246 prison places would be required in steady state, with a transition cost of £71.3m to construct and an ongoing annual cost of £15.1m to run once these places are all in use.

88. Due to the existing tariff lengths given for murder, impact from Option 2A for a 20-year starting point would not be expected to start to be felt until around 2043, with steady state not being reached until around 2055. The 40-year NPC of this option is £111.1m for HMPPS - Prisons.

25-year starting point

89. For a 25-year starting point, it is estimated that an additional 492 prison places would be required in steady state, with a transition cost of £142.7m to construct and an ongoing annual cost of £30.1m to run once these places are all in use.

90. Due to the existing tariff lengths given for murder, impact from Option 2A for a 25-year starting point would not be expected to start to be felt until around 2043, with steady state not being reached until around 2057. To cover the estimated impact of this option, we have produced a 40-year NPC, which comes to £204.5m for HMPPS - prisons.

Wider Criminal Justice System

91. As the use of a weapon and the circumstances in which it is used is already considered in the investigation and prosecution/defence of murder cases, no additional costs are expected for police, CPS, HMCTS or LAA.

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

Non-monetised costs

93. Option 2A may create the following non-monetised costs:

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

Benefits of Option 2A

Monetised benefits

94. It has not been possible to quantify any of the benefits expected from Option 2A.

Non-monetised benefits

95. Our overarching policy aim is to ensure that the seriousness of all murders committed with a knife or weapon is recognised in the sentencing framework. This issue has particular relevance to cases of domestic murder, where a weapon used is less likely to have been taken to the scene with intent and therefore the 25-year starting point is less likely to apply. Eliminating or reducing the difference in the starting point for murders committed with a weapon taken to the scene (25 years) and that which normally applies to all other murders committed with a weapon (15 years, except for firearms cases), could increase public protection and public confidence in the justice system. We are launching this consultation to ensure that all options for reform in this area have been explored, further to the reforms we have already introduced/ committed to introduce as part of the Government response to the Domestic Homicide Sentencing Review.

Option 2A Summary

96. Table 3 below summarises the estimated prison place impacts for a 20-year starting point and 25-year starting point for Option 2A and Table 4 below shows the 40-year NPV for each of these starting points.

Table 3: Estimated prison place impact of Option 2A at steady state, by potential higher starting point

Starting point	Estimate
20-year starting point	246
25-year starting point	492

Table 4: 40-year NPV for Option 2A by potential higher starting point

Starting point	40-year NPV
20-year starting point	-£111.1m
25-year starting point	-£204.5m

Option 2B: Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other weapon, which is higher than the baseline starting point of 15-years, but which is disapplied in cases where a victim of abuse has killed their abuser.

Costs of Option 2B

Monetised costs

HMPPS – Prisons

97. Option 2B could increase the tariff length for murders committed with a knife or weapon which was not taken to the scene with intent, except in those cases where the perpetrator of the murder was a victim of abuse who has killed their abuser. It is therefore expected to have prison place impacts. As with Option 2A, this will depend on the specific higher starting point applied and therefore estimated impacts for a higher starting point of 20-years and 25-years have been produced based on the assumptions set out in Table 5.

20-year starting point

98. For a 20-year starting point, it is estimated that an additional 240 prison places would be required in steady state, with a transition cost of £69.6m to construct and an ongoing annual cost of £14.7m to run once these places are all in use.

99. Due to the existing tariff lengths given for murder, impact from Option 2B for a 20-year starting point would not be expected to start to be felt until around 2043, with steady state not being reached until around 2055. The 40-year NPC of this option is £108.3m for HMPPS - prisons.

25-year starting point

100. For a 25-year starting point, it is estimated that an additional 479 prison places would be required in steady state, with a transition cost of £138.9m to construct and an ongoing annual cost of £29.3m to run once these places are all in use.
101. Due to the existing tariff lengths given for murder, impact from Option 2B for a 25-year starting point would not be expected to start to be felt until around 2043, with steady state not being reached until around 2057. The 40-year NPC of this option is £199.1m for HMPPS - prisons.

Wider Criminal Justice System

102. As the use of a weapon and the circumstances in which it is used is already considered in the investigation and prosecution/defence of murder cases, no further costs beyond those set out in the IA for the Statutory Instrument⁹ are expected for the police, CPS, HMCTS or LAA.

Non-monetised costs

103. As per Option 2A (see 91).

Benefits of Option 2B

Monetised benefits

104. It has not been possible to quantify any of the benefits expected from Option 2B.

Non-monetised benefits

105. Our overarching policy aim is to ensure that the seriousness of all murders committed with a knife or weapon is recognised in the sentencing framework (as per Option 2A), while also ensuring that the reduced culpability of perpetrators who are also victims is also recognised. We are launching this consultation to ensure that all options for reform in this area have been explored, further to the reforms we have already introduced/ committed to introduce as part of the Government response to the Domestic Homicide Sentencing Review.

F. Risks and assumptions

106. The above impacts have been estimated on the basis of a number of assumptions. As each of these assumptions are associated with some degree of uncertainty, there are risks associated with each estimate. Table 5 below sets out the main assumptions and the associated risks and uncertainties.

Table 5: Main assumptions, risk and uncertainties

	Main assumptions	Risks/uncertainties
Cross-cutting assumptions		
Implementation date	<p>We will carefully consider the consultation responses to determine next policy steps. Should any legislation be taken forward, it will come into effect when Parliamentary time allows. For the purposes of this IA, implementation is assumed in 2024-25.</p> <p>Legislation is assumed to only apply to offences committed after the implementation date of the legislation, therefore the impacts of options are assumed to start from sentencing occasions in 2025-26 due to the time lag between committal of an offence and date of sentencing.</p>	<p>Any change to the implementation of the policy will delay the impacts by an equal amount of time.</p>

⁹ The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 - Impact Assessment

<p>Prison estate place costs</p>	<p>Additional adult prison places will need to be constructed to meet any additional prison demand. It is assumed that the construction of each adult prison place will take place in the two years before it is needed, and the costs will fall over this same period.</p> <p>Due to when impacts will be felt, all impact applies to the adult prison estate even for those sentenced whilst aged under 18 as this cohort will transfer to the adult estate at age 18.</p> <p>The construction cost of an additional prison place is £290,000. This is an indicative cost based on the publicly announced funding of £2.5bn for 10k prison places in 2019 with inflation applied,¹⁰ although given the scale of the expansion and current high levels of inflation this is likely to be a low estimate.</p> <p>The average running cost of a prison place is £51,000 per year (2023/24 prices), based on the published figure of £46,696¹¹ (2021/22 prices and we have assumed that prison costs will continue to rise in line with inflation).</p> <p>Optimism bias of 20% has been applied to future prison running costs.</p> <p>Net present value has been calculated by applying a 3.5% discount rate for each future year (3% for impacts after the 30-year point). The gross domestic product (GDP) deflator has been used.</p> <p>These options are only expected to impact tariff length, with no impact to time spent in prison post-tariff. Based on published data on the median time served in prison prior to first release from a mandatory life sentence¹² and internal MI, an assumption of a median extra 3 years spent in prison post-tariff prior to release is assumed in this IA.</p>	<p>The adult prison place construction cost is an average based on the total amount of money allocated to the construction of 10,000 additional prison places over a 10-year period and inflated to 2023/24 prices. The exact construction profile will vary depending on when additional prison capacity is needed. This depends on a range of factors, primarily natural changes in the prison population and future policy changes that increase or decrease the prison population. Because of this, it is not possible to allocate precise prison places and costs for each additional place at this point.</p> <p>Prison estate unit costs cover the day-to-day running costs of a prison only, and do not incorporate any capital costs associated with construction, investment and costs associated with any developing or contracted out services or rehabilitative activities these prisoners might undertake while in custody.</p> <p>Release is a matter for the Parole Board. As such, the median time spent in prison post-tariff is highly uncertain and some prisoners may not be released. Time spent in prison post-tariff impacts on the modelling of flows in and out of prison and therefore the year impacts occur in.</p>
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Option 1A: Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which is higher than the baseline starting point of 15-years.

<p>Prevalence of a history of controlling or coercive behaviour (CCB) by the perpetrator against the victim within murder cases</p>	<p>The DHSR case file review sample is assumed to be representative of intimate partner (IP) domestic homicides and has been used to inform the following assumptions on the prevalence of controlling or coercive behaviour (CCB) by the perpetrator against the victim in murder cases.</p> <p>For this IA, we have assumed the prevalence of these factors in each estimate will remain constant in future years.</p>	<p>Given the limitations of the case file data (see paragraphs 37-39), these assumptions are highly uncertain.</p> <p>CCB is underreported and overlooked. However, making CCB a statutory aggravating factor may increase the likelihood of it being identified</p>
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¹⁰ 10,000 extra prison places to keep the public safe - GOV.UK (www.gov.uk)

¹¹ [Costs per prison place and costs per prisoner 2021 to 2022 summary \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

¹² Prison releases: 2022, [Offender Management Statistics quarterly: October to December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

	<p><u>IP domestic murders</u></p> <p>Low estimate The low estimate assumed the prevalence of CCB by the perpetrator against the victim to be 27% in IP domestic murders. This was based on the prevalence in the case file review where a history of CCB by the perpetrator against the victim was identified and had been considered as an aggravating factor in sentencing.</p> <p>Best estimate We anticipate that making a history of CCB against the victim a statutory aggravating factor will increase identification of CCB. Therefore, the best estimate assumed that the prevalence of CCB by the perpetrator against the victim is 51%. This was based on the proportion of cases in the case file review where this was identified, irrespective of whether or not it had been considered as an aggravating factor in sentencing.</p> <p>High estimate CCB is under-reported and often overlooked. Therefore, the high estimate assumed a prevalence of 87%, based on the proportion of cases in the case file review in which any of the following factors were identified: a history of CCB, killing at the end of the relationship, overkill, or strangulation. In the DHSR, Clare Wade KC considers all these factors to be linked to CCB.</p> <p><u>Familial domestic murders</u></p> <p>Low, best and high estimate Based on recent research (see paragraphs 46-47), it was assumed for each estimate (low, best and high) that CCB will be half as prevalent as for IP murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders</u></p> <p>Low, best and high estimate As the CCB aggravating factor will only apply in domestic cases, it is assumed that the prevalence of CCB will be 0 for non-domestic murder cases.</p>	<p>and considered in sentencing. This uncertainty around prevalence is reflected in low, best and high estimates.</p> <p>It is difficult to predict future changes in the types of offences being committed and prevalence of certain characteristics. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p>
Annual homicides and type	<p>As the case review sample did not include all intimate partner homicides in the period (despite best efforts to do so), we have used the last five years of published homicide statistics to calculate the average number of domestic homicides each year.</p> <p><i>Figures are rounded to the nearest whole number in the text below and therefore may not add.</i></p> <p>Based on a five-year average, it is assumed for this IA that per annum there are:</p> <ul style="list-style-type: none"> • 151 domestic homicides • 80 domestic homicides by an intimate partner, all with victims aged 16 or over. 	<p>It is difficult to predict future changes in the types of offences being committed. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p>

	<ul style="list-style-type: none"> 70 familial domestic homicides, 44 with a victim aged 16+. <p>Whilst homicide data may be updated as cases progress, it is assumed that these statistics provide accurate representation of the relative prevalence of intimate partner domestic homicides versus familial domestic homicides and age of victim.</p> <p>Based on the case file review, it is assumed that 74% of these will result in a murder conviction and 26% a manslaughter conviction.</p> <p>For this IA, we have assumed that this will remain constant in future years.</p>	
Impact on sentencing	<p>As Schedule 21 only applies to murder, impact estimates only cover sentences for murder.</p> <p>Current sentencing practice for Option 0 was based on the tariff lengths given to relevant cases in the case file review, plus the estimated impact on relevant cases of making CCB by the perpetrator against the victim a statutory aggravating factor (as set out in the IA for the Statutory Instrument).¹³</p> <p>The consultation invites views on whether there should be a higher starting point and, if so, what it should be. For this IA, we have produced estimates for a 20-year starting point and 25-year starting point.</p> <p>Data from the intimate partner domestic homicide case file review showed a difference in average tariff length of 5.5 years between murder cases committed with a knife or weapon which was taken to the scene with intent and had a 25-year starting point, compared with all other murder cases committed with a knife or weapon which had a 15-year starting point (an average tariff length of 24.5 years and 19.0 years respectively). A similar difference in average tariff length – 5 years – was seen in the case file review of non-domestic murder cases in 2022. Based on this, the following assumptions were made for Option 1A-B.</p> <p>25-year starting point</p> <ul style="list-style-type: none"> An additional 5 years added to tariff length for relevant cases with a 12-year or 15-year starting point. No impact to relevant cases with a 25-year, 30-year or whole life order starting point. <p>20-year starting point</p> <ul style="list-style-type: none"> An additional 2.5 years (half the assumed impact of the 25-year starting point) added to tariff length for relevant cases with a 12-year or 15-year starting point. No impact to relevant cases with a 25-year, 30-year or whole life order starting point. 	<p>The domestic homicide case file review may not be representative of current sentencing practice and therefore may not be an accurate baseline.</p> <p>Additionally, the estimated impacts of making CCB by the perpetrator against the victim an aggravating factor are based on a range of assumptions with risks and uncertainties (see Table 4 in the previously published IA).¹⁴</p> <p>Other changes (two further aggravating factors and one mitigating factor) are being made to Schedule 21 in response to the DHSR. The estimated impacts of these other measures set out in the relevant IAs¹⁵ and are in addition to and separate from the baseline current sentencing practice of Option 0.</p> <p>Sentencing in individual cases is a matter for the independent judiciary. Sentencing decisions are based on all the circumstances of a case. As such, it is not possible to precisely estimate the impact of a higher starting point. Additionally, it is assumed that Option 1A will not impact on cases that already meet the criteria for a 25-year or higher starting point. This is highly uncertain as meeting more than one criterion for a higher starting point may affect tariff</p>

¹³ The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 - Impact Assessment

¹⁴ Ibid.

¹⁵ Ibid.

		length. Depending on measures taken forward in response to the consultation, this assumption will be refined. These assumptions are therefore highly uncertain and dependent on sentencer behaviour and the circumstances of future individual cases.
Option 1B: Consult on amending Schedule 21 by creating a starting point for murders preceded by a history of controlling or coercive behaviour against the murder victim which only applies to cases where the controlling or coercive behaviour was of a high level of seriousness.		
Prevalence of murder cases where the CCB was of a high level of seriousness	It was assumed that the prevalence of CCB which was of a high level of seriousness is equivalent to the prevalence of cases identified in the domestic homicide case file review in which CCB had been considered as an aggravating factor in sentencing. A relative prevalence was applied to familial domestic murders: based on recent research (see paragraphs 46-47), it was assumed that CCB will be half as prevalent as for intimate partner murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16. This equates to the low estimate in Option 1A with the same methodology and assumptions applied as set out above in this table.	As CCB being considered as an aggravating factor has been used as a proxy for murder cases where the CCB was of a high level of seriousness, this estimate is highly uncertain.
Option 2A: Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other a weapon, which is higher than the baseline starting point of 15-years.		
Prevalence of murders committed with a weapon	Domestic murders The DHSR case review sample is assumed to be representative of intimate partner (IP) domestic homicides and has been used to inform the following assumption on the prevalence of domestic murders committed with a weapon that would be impacted by Option 2, which is 54% (excluding cases that already have a starting point of 25 years, 30 years or a whole life order). This proportion was also assumed to apply for familial domestic murders. Non-domestic murders The case review of sentencing remarks for murder cases in 2022 informed the assumption on the prevalence of non-domestic murders committed with a weapon that would be impacted by Option 2, which is 10% (again excluding cases that already have a starting point of 25 years, 30 years or a whole life order). For this IA, we have assumed the prevalence of these factors in each estimate will remain constant in future years.	Given the limitations of the DHSR case file review data (see paragraphs 37-39) and lack of data for familial domestic murders, these assumptions are uncertain. As set out at paragraphs 40-42, the case review of non-domestic murders is unlikely to be representative and may be skewed towards high-profile cases that may be more likely to have been committed with a weapon taken to the scene with intent. This assumption is therefore highly uncertain and has been tested via sensitivity analysis (see 107-109).
Annual homicides and type	As neither case review sample included all murder cases in the period reviewed, we have used the last five years of published homicide statistics to calculate the average number of domestic and non-domestic murders each year.	It is difficult to predict future changes in the types of offences being committed. If there are significant changes in offences being committed,

	<p>Based on a five-year average, it is assumed for this IA that per annum there are:</p> <ul style="list-style-type: none"> • 151 domestic homicides • 505 non-domestic homicides <p>Whilst homicide data may be updated as cases progress, it is assumed that these statistics provide accurate representation of the relative prevalence of intimate partner domestic homicides versus familial domestic homicides and age of victim.</p> <p>Based on the DHSR case file review, it is assumed that 74% of these will result in a conviction of murder and 26% a conviction of manslaughter.</p> <p>For this IA, we have assumed that this will remain constant in future years.</p>	<p>this will affect the estimates in this IA.</p>
<p>Impact on sentencing</p>	<p>As Schedule 21 only applies to murder, impact estimates only cover sentences for murder.</p> <p>Given the limitations of the case file review used for non-domestic murder cases (see 40-42), rather than basing current sentencing practice for Option 0 on the current tariff length of the relevant cases in the case sample, an even distribution of tariff lengths between 15 and 25 years was assumed for cases with a 15-year starting point. This assumption is used to estimate the timing of when impacts will start to be felt and reach steady state.</p> <p>The consultation invites views on whether there should be a higher starting point and, if so, what it should be. For the purposes of this IA, we have produced estimates for a 20-year starting point and 25-year starting point.</p> <p>Data from the DHSR case file review showed a difference in average tariff length of 5.5 years between murders committed with a weapon which was taken to the scene with intent and had a 25-year starting point, compared to all other murders committed with a weapon which had a 15-year starting point (an average tariff length of 24.5 years and 19.0 years respectively). A similar difference in average tariff length between these types of cases - 5 years – was seen in the case file review of non-domestic murder cases. Based on this, the following assumptions were made.</p> <p>25-year starting point</p> <ul style="list-style-type: none"> • An additional 5 years added to tariff length for relevant cases with a 12-year or 15-year starting point. • No impact to relevant cases with a 25-year, 30-year or whole life order starting point. <p>20-year starting point</p> <ul style="list-style-type: none"> • An additional 2.5 years (half the assumed impact of the 25-year starting point) added to tariff for cases with a 12-year or 15-year starting point. • No impact to relevant cases with a 25-year, 30-year or whole life order starting point. 	<p>The assumption on current tariff lengths is uncertain. If there are significant differences from the assumption, this will affect the estimates in this IA in terms of the timing of when impacts will start to be felt and reach steady state.</p> <p>Sentencing in individual cases is a matter for the independent judiciary. Sentencing decisions are based on all the circumstances of a case. As such, it is not possible to precisely estimate the impact of a higher starting point.</p> <p>Additionally, it is assumed that Option 2A will not impact on cases that already meet the criteria for a 25-year or higher starting point. This is highly uncertain as meeting more than one criterion for a higher starting point may affect tariff length. Depending on measures taken forward in response to the consultation, this assumption will be refined.</p> <p>These assumptions are therefore highly uncertain and dependent on sentencer behaviour and the circumstances of future individual cases.</p>

Option 2B: Consult on amending Schedule 21 by creating a starting point for all murders committed with a knife or other weapon, which is higher than the baseline starting point of 15-years, but which is disapplied in cases where a victim of abuse has killed their abuser.

<p>Prevalence of murders committed with a weapon where the perpetrator is a victim of abuse who has killed their abuser</p>	<p><u>IP domestic murders</u> The DHSR case file review sample is assumed to be representative of intimate partner (IP) domestic homicides and has been used to inform the assumption relating to the prevalence of murders committed with a weapon where the perpetrator is a victim of abuse who has killed their abuser. In the DHSR case review, this prevalence was 2% of murder cases.</p> <p><u>Familial domestic murders</u> Based on recent research on prevalence of CCB in domestic homicides (see paragraphs 46-47), it was assumed that cases of murder where a victim of abuse has killed their abuser will be half as prevalent as for IP murders within familial domestic murders (victim aged 16+); and a quarter as prevalent in those where the victim is aged under 16 (excluding infanticide cases).</p> <p><u>Non-domestic murders</u> It is assumed that the prevalence of domestic abuse by the victim against the perpetrator will be 0 for non-domestic murder cases.</p> <p>For this IA, we have assumed the prevalence of these factors in each estimate will remain constant in future years.</p> <p>Otherwise, the same methodology and assumptions were used for Option 2B as for Option 2A (see rows above in this table).</p>	<p>Given the limitations of the DHSR case file review data (see paragraphs 37-39), these assumptions are highly uncertain.</p> <p>CCB is underreported and overlooked. However, making it a factor that disapplies a higher starting point may increase the likelihood of it being identified and considered in sentencing.</p> <p>It is difficult to predict future changes in the types of offences being committed and prevalence of certain characteristics. If there are significant changes in offences being committed, this will affect the estimates in this IA.</p>
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Sensitivity analysis for Option 2A

- 107. The estimates in this IA are based on the assumptions set out in Table 5 above. However, the assumption on the proportion of non-domestic murder cases committed with a weapon that will be impacted by Option 2A is highly uncertain given the likely skew towards high-profile cases in the sample of sentencing remarks reviewed. To reflect this uncertainty, sensitivity analysis was conducted to illustrate how the NPV would vary should the assumed proportion (10%) of non-domestic murder cases impacted vary.
- 108. To illustrate this, sensitivity analysis was conducted based on a proportion of 20% and 40% for non-domestic murders. Otherwise, the methodology and impacts for domestic murders were as for the main analysis.
- 109. Table 6 below shows the estimated prison place impact and table 7 the estimated 40-year NPV for the two scenarios produced for the sensitivity analysis. As shown in the tables below, a variation in this assumption has a substantial impact on estimated prison place impacts for Option 2A and associated costs.

Table 6: Estimated prison place impacts should the proportion of non-domestic murder cases impacted by Option 2A vary

Proportion of non-domestic murders impacted	Estimated prison place impact	
	20-year starting point	25-year starting point
10% (as per the main analysis)	246	492
20%	338	676
40%	525	1,051

Table 7: 40-year NPV should proportion of non-domestic murder cases impacted by Option 2A vary

Proportion of non-domestic murders impacted	40-year NPV	
	20-year starting point	25-year starting point
10% (as per the main analysis)	-£111.1m	-£204.5m
20%	-£152.6m	-£281.0m
40%	-£237.1m	-£436.8m

G. Wider impacts

Equalities

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

Impact on small and micro businesses

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

Potential trade implications

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

Better Regulation

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

H. Monitoring and Evaluation

114. We will carefully consider the responses to the consultation and publish a government response in due course. The impact of any changes implemented in response to this consultation would be monitored by MoJ or associated agencies.