

<b>Title: Consultation on introducing an internal reconsideration mechanism for parole decisions</b>  <b>IA No: MoJ003/2018</b> <b>RPC Reference No: N/A</b> <b>Lead department or agency: Ministry of Justice</b> <b>Other departments or agencies: Parole Board, Her Majesty's Prison and Probation Service and Legal Aid Agency</b>	<b>Impact Assessment (IA)</b>			
	<b>Date: 30/04/2018</b>			
	<b>Stage: Consultation</b>			
	<b>Source of intervention: Domestic</b>			
	<b>Type of measure: Primary legislation</b>			
	<b>Contact for enquiries: paroleboardreview@justice.gov.uk</b>			
<b>Summary: Intervention and Options</b>				<b>RPC Opinion: RPC Opinion Status</b>

Cost of Preferred (or more likely) Option				
Total Net Present Value (NPV)	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£4m - £32m	£m	£m	Not in scope	Not a regulatory provision

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

In January 2018 a Review was launched into the law, policy and procedures relating to Parole Board decisions. This consultation is a direct result of the Government Review and considers the detail of the proposed new mechanism to allow the reconsideration of Parole Board decisions. The review concluded that there is justification to introduce a mechanism by which Parole Board decisions should be reconsidered. The rationale for intervention is equity. Introducing a reconsideration mechanism would allow, where specific grounds are met, offenders, victims, the Secretary of State (SoS) and potentially the wider public to apply for reconsideration of the Parole Board's decision to grant or deny an offenders release from custody. The design questions outstanding include; which types of decisions should be reconsidered? Who should be able to apply for reconsideration of a decision? On what basis should a decision be referred for reconsideration? Finally, how could we make the reconsideration process transparent? The introduction of a new process, will be supported by guidance and awareness-raising activity both internally and externally to the Parole Board.

**What are the policy objectives and the intended effects?**

The policy objectives and intended effects of designing a mechanism by which Parole Board decisions can be challenged are as follows;

- allow the creation of a process that was specifically designed to reconsider Parole Board decisions,
- allow decisions to be reconsidered before any judicial review, and,
- provide for increased transparency in the system.

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

Two options are considered in this Impact Assessment:

- Option 0: Do nothing: the existing two mechanisms to appeal Parole Board decisions remain the only available options. Any Judicial Review (JR) would continue to require a fee and the Public Protection Casework Staff (PPCS) re-referral mechanism is narrow in scope.
- Option 1: Creation of a reconsideration mechanism, short of judicial review. This would run within a discrete division within the Parole Board. It is proposed that this process will only be applicable for decisions where the Parole Board has granted or denied release. All other decisions, recommendations, or judgements by the Parole Board will be dealt with through alternative routes. This process would be free to access. Conversely to the JR process where applicants must pay a fee to raise a case.

The preferred option is option 1 as this is the only option which will deliver the policy objectives.

<b>Will the policy be reviewed? Yes. If applicable, set review date:</b> As part of the response to this consultation.				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			<b>Micro</b> No	<b>Small</b> No
			<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	
			<b>Non-traded:</b> 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: 30/04/18

# Summary: Analysis & Evidence

Option 1

**Description:** Creation of a Parole Board internal reconsideration mechanism

## FULL ECONOMIC ASSESSMENT

Price Base Year 16/17	PV Base Year 18/19	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£4.1m	High: -£31.8m	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/A	N/A	£0.5m	£4.1m
High	N/A		£3.7m	£31.8m
Best Estimate	N/A		N/A	N/A

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

The key monetised costs would fall to the Parole Board from checking the eligibility of reconsidered cases and repaneling those that meet the threshold. These would cost £0.2m in the low volume scenario with a low proportion of successful cases and £1.3m in the high-volume scenario with a high proportion of successful cases. The costs to Legal Aid for case preparation and advice range between £0.1m and £1.0m for the same above scenarios. The costs to HM Prisons and Probation Service (HMPPS) in case preparation range between £0.1m and £1.1m for the same above scenarios. There would be a small cost to PPCS from sending a SoS representative to 3% of the repanelled oral hearings as opposed to the 1% of cases as at present.

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

There would be a cost to HMPPS in retaining prisoners in custody for longer while their Parole Board decision is provisional (if the initial decision was to release). There may also be a cost to the Parole Board if the reconsideration mechanism increases backlog and therefore compensation pay-outs. There may also be a cost to HMPPS for Victim Liaison Officer case preparation time if the reconsidered case is brought forward by the victim.

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

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

No identified monetised benefits.

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

We are consulting on who would be able to request a Parole Board decision to be reconsidered without the financial burden of a JR or the narrow grounds of the current re-referral mechanism. The reconsideration mechanism may also divert cases from Judicial Review or re-referral. This benefit has not been monetised.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The total volume of applications for reconsideration has not been modelled on any prior information. Due to the uncertainties about case volumes, various scenarios with wide ranges have been used. It has been assumed that all cases which meet the reconsideration threshold will be repanelled orally. However, it is possible that some cases will be panelled by paper instead. Section F contains a sensitivity analysis which models the total costs if all hearings are dealt with by paper and if 50% of hearings are dealt with by paper and 50% by oral hearing. No prison place impacts have been modelled yet due to uncertainties about behaviour and release mechanism changes. Parole Board volumes and costs are all based on data from the Parole Board Annual Review 2016/17. Please see the sensitivity analysis section and risk and assumption section below for more details.

## BUSINESS ASSESSMENT (Option 1)

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

# Evidence Base (for summary sheets)

## A. Background

1. The Parole Board was set up in 1967 to advise the Home Secretary, who at that time was responsible for making decisions regarding the release of prisoners on licence and their recall to prison. The Parole Board has since evolved, largely in response to case law, from an advisory body into one that is independent, possessing a quasi-judicial function.
2. The Parole Board is now established, under the Criminal Justice Act 2003, as a body corporate. It has the status of an executive non-departmental body, meaning that although it receives its funding from central government through the Ministry of Justice, its day-to-day operations are independent. The 2003 Act provides that Secretary of State for Justice does however appoint members of the Parole Board and make rules governing the proceedings of the Board through the Parole Board Rules.<sup>1</sup> The most recent amendments to Parole Board Rules were made in 2016.
3. The Parole Board:
  - a. makes decisions on release for indeterminate sentenced prisoners and some determinate sentence prisoners prior to an automatic release date (some extended sentences and discretionary conditional release sentences), and for all indeterminate and certain determinate recalled offenders;
  - b. where responsible for the initial release of the prisoner, makes decisions on licence conditions and any subsequent variation to those conditions;
  - c. It reviews the circumstances in which all indeterminate and some determinate sentence prisoners have been recalled to prison for alleged or actual re-offending, or breach of licence during the probation supervision period, and decides whether to re-release these prisoners. This function often requires the Parole Board to make findings of fact about the circumstances of recall, and;
  - d. makes recommendations to Secretary of State on the transfer of indeterminate sentence prisoners from a closed (high or medium security) to an open (low security) prison, and compassionate release of indeterminate offenders.
4. The Parole Board cannot:
  - a. Make assessments as to whether the original sentence handed down by the court was suitable and/or appropriate.
  - b. Make an assessment as to release based on anything other than the risk of an offender.
5. In January 2018, the Government launched a review into the law, policy and procedure relating to parole decisions, focussing on the following four work strands:<sup>2</sup>
  - a. The law, policy, guidance and practice relating to challenges to Parole Board decision making;
  - b. The transparency of Parole Board decision making;
  - c. Victim involvement in Parole Board hearings, and;
  - d. Arrangements for communicating with victims
6. The review has looked at issues with the parole process as a whole, but it arose out of significant concerns that were raised following the Parole Board's decision to direct the release of John Worboys. This was a serious and unusual case, but it shone a light on the way we communicate

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2016/1041/contents/made>

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674955/pb-review-terms-of-reference.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674955/pb-review-terms-of-reference.pdf)

with victims and their involvement in the parole process, as well as the lack of transparency about Parole Board decisions. It also raised questions about whether there needs to be a new mechanism to enable such decisions to be looked at again.

7. This consultation is aimed at those who have an interest in the decision making of the Parole Board for England and Wales. This paper considers and seeks views on the proposed parameters for and operation of the proposed reconsideration process, with respect to:
  - a. which types of decisions should be reconsidered,
  - b. who should be able to apply for reconsideration of a decision,
  - c. on what basis a decision should be reconsidered, and,
  - d. how we could make the reconsideration process transparent, whilst also ensuring there are sufficient safeguards in place to protect panel members, victims and others.
8. The consultation is open from 30/04/18 to 30/07/18.

## **B. Policy Rationale & Objectives**

### **Economic Rationale**

9. The conventional economic approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the needier groups in society).
10. The rationale for intervention in this instance is equity: introducing a reconsideration mechanism could allow offenders, victims, the SoS and potentially the public to challenge the life-altering decision around an offender's release from prison where certain criteria are met. We are consulting on who could apply for a decision to be reconsidered. Introducing education, guidance and outreach alongside the new reconsideration mechanism, will address issues of asymmetric information, where victims and offenders may not be fully aware of how parole decisions can be challenged at present.

### **Policy objective**

11. The policy objectives of designing a mechanism by which Parole Board decisions can be challenged are as follows;
  - allow the creation of a process that was specifically designed to reconsider Parole Board decisions,
  - allow decisions to be reconsidered before any judicial review, and,
  - provide for increased transparency in the system.

## **C. Affected Stakeholder Groups, Organisations and Sectors**

12. The following groups will be most affected by the options assessed in this IA:
  - Offenders
  - The Parole Board

- Victims
- Her Majesty's Prison and Probation service (HMPPS)
- Probation services (National Probation Service/Community Rehabilitation Companies)
- Legal services
- The Legal Aid Agency (LAA)
- Public Protection Casework Staff (PPCS)<sup>3</sup>

## D. Description of Options Considered

13. To meet policy objectives set out in section B, two options are considered in this IA:

**14. Option 0/‘do nothing’): The current mechanisms for challenging a Parole Board decision would remain in place.**

15. Under this option a parole decision could, as at present, only be challenged either through a JR or through the external re-referral process, as completed by PPCS.

**16. Option 1: introduce a new reconsideration mechanism**

17. Under this option a new reconsideration mechanism would be introduced, which would be managed by the Parole Board. We are consulting on who would be able to make an application for reconsideration. It could be possible for victims, offenders, the SoS representatives and potentially even the public would be able to apply for a parole decision on release to be reconsidered. The initial release decision by the Parole Board would be made provisional, to allow a set amount of time for this to take place. Applications would then be considered by the Parole Board and if there is something fundamental in the consideration of the case which resulted in a decision being flawed, the case will be reconsidered in the most appropriate way. This may result in:

- a. reconvening the previous panel,
- b. or a re-hearing with a new panel either as a paper or oral hearing. For the latter we would expect on oral hearing to be judicially-chaired.

18. Option 1 would reduce PPCS involvement and allow applications for reconsideration of parole decisions to come through directly to the Parole Board. The current re-referral system has very limited grounds with a difficult to reach threshold. It is envisaged that the new process would have grounds similar to a Judicial Review (JR), although this is subject to consultation. However, unlike the JR, the new reconsideration mechanism will be free to access.

19. Given the need for the government to maintain confidence in the criminal justice system and ensure it is fair and robust, ‘do nothing’ is not a credible option.

## E. Cost and Benefit Analysis

20. This IA identifies the key monetised and non-monetised impacts on the MoJ, its agencies and other groups. These monetised and non-monetised impacts are compared to the ‘Do nothing’ option, i.e., the status quo, in which the JR and PPCS re-referral systems are the only ways in which a Parole Board hearing can be reconsidered. As this would involve comparing the ‘Do nothing’ option to itself, its costs and benefits are necessarily zero as is its Net Present Value (NPV). Note, the costs associated with any additional prison place impacts has **not** been monetised. The assumptions

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<sup>3</sup> PPCS sit within the Safer Custody and Public Protection Group of HMPPS. They ensure oversight of the Generic Parole Process (GPP) for indeterminate sentenced prisoners, ensure that recalls to custody are processed in a timely manner and process requests for licence conditions upon release

made in the below costing note are surrounded by much uncertainty, therefore, a variety of scenarios has been tested where possible.

21. It is important to note that the impacts described in this IA are estimates which are based on a number of assumptions and should not be regarded as firm predictions. For more information relating specifically to these assumptions, please refer to the Assumptions and Risks section (section F).
22. Unless stated otherwise, the impacts in this IA have been calculated on the following basis:
  - All monetised costs and benefits are in 2016/17 prices.
  - 15% Optimism Bias (OB) has been applied to all costs and benefits.
  - Estimates of volumes in scope for the options considered are based on the volume of parole hearings in 2016/17.
  - Unit costs are assumed to remain constant in real terms.
  - Estimates of the costs and benefits of the options considered are presented as a NPV over a 10-year period from 2018/19, using volumes from 2016/17.

### **Option 1 – Introduce a Parole Board internal reconsideration mechanism.**

#### Volumes in scope

12. The Parole Board's power to revisit some decisions was established through case law and is only applicable to decisions relating to whether an individual is granted or refused release when they have reached their parole eligibility point. This includes recall decisions.
13. The grounds for a Parole Board to re-open their decision were established in case law in the case of Robinson in 1999 and are as follows:
  - i. The decision was fundamentally flawed (e.g. based on significant incorrect information); or
  - ii. There has been a supervening material change of circumstances (e.g. a prisoner's risk level substantially elevates, or an essential component of the release plan falls through).
14. In 2016/17, approximately 50 cases were brought to PPCS for re-referral and 214 pre-action letters were brought forward for Judicial Review. It is possible that once a new reconsideration mechanism is communicated to offenders and the public, there may be an increase in requests for reconsideration cases above and beyond this base case.
15. For the purpose of this IA, an increase in case volumes has been assumed because:
  1. The current re-referral process has very limited grounds with a very difficult to reach the threshold level. It is anticipated that the new process would have JR-type grounds and potentially extend the scope for cases which can be brought forward.
  2. Unlike the JR, the new internal reconsideration mechanism will not require the party challenging the decision to pay a court fee.
  3. Changes to who can request a reconsideration: Potentially, a victim might also be able to apply for reconsideration of a Parole Board decision, rather than the parties to the case and the Parole Board in the current system.
  4. Greater transparency: if more information is available in the public domain, more people may want to apply for consideration, regardless of whether the threshold is met or not.
  5. Public interest in the Parole Board: offenders would have a better understanding of this reconsideration mechanism and their legal representatives would also be better informed. This would be partly influenced by the transparency work-strand, which was reviewed as a separate workstream within the wider review.
16. Given the potential level of expected change, existing rereferral volumes are inappropriate for estimating the volume of cases under option 1. To estimate the impact of this option a top-down

modelling approach has been used. This means that rather than taking current re-referral numbers and scaling them up, data about the total number of eligible cases has been used and scaled down, assuming that a proportion of these will involve an application for reconsideration of the decision.

17. To reflect the uncertainties concerning potential reconsideration volumes, scenario tests have been conducted applying a range of engagement rates and success rates (i.e. meeting the reconsideration threshold):
  - The three reconsideration engagement rates tested are: 5%, 10% and 15% of all cases heard by the Parole Board in one year.
  - The three different success rates tested are: 10%, 20% and 30% of all applications for reconsideration brought forward.
18. A wide range of scenarios was tested as there is no evidence to inform how many cases will pass through the new reconsideration threshold. The scope for reconsideration, however, might be built on the current scope for JR but could be applied for more widely depending on the results of this consultation. Given that the current success rate for JR pre-action letters<sup>4</sup> is approximately 12%<sup>5</sup>, the success rate under the new reconsideration mechanism has been tested at 10%, 20% and 30%.
19. The total number of paper hearings held in 2016/17 was used as a starting point for testing the various scenarios of potential case volumes subject to reconsideration. It is possible for one prisoner to have multiple paper hearings in one year, this volume testing is likely to be an upper-bound on the prisoners in scope. Paper hearing volumes have been used as a proxy because offenders would be able to request a case be reconsidered only once they exhaust all other routes of having their decision reviewed. Where applicable, offenders should be required to request an oral hearing before applying for a decision to be reconsidered. This is in line with current JR requirements to exhaust all other appeal methods before going to JR.
20. As such this would result in offenders then only being able to apply once per application for reconsideration as opposed to at each decision. As every case has a paper hearing, this is the best proxy.<sup>6</sup> In 2016/17, there were 13,709 paper hearings held at the Parole Board.<sup>7</sup> Table 1 shows the estimate of volumes in scope under the different scenarios. The table shows that, depending on the engagement rate and success rate in meeting the threshold for reconsideration, there could be between 70 and 620 parole decisions per year for the Parole Board to reconsider.

**Table 1: Estimate of volumes in scope – annual applications for reconsideration**

Engagement scenario	Total volume applicable for the reconsideration mechanism	Success rate in meeting threshold requirements for reconsideration		
		10%	20%	30%
5%	687	69	137	206
10%	1,374	137	275	412
15%	2,061	206	412	618

## Costs of Option 1

<sup>4</sup> A JR pre-action letter is written by the party challenging a parole decision, and is made before a claim is submitted.

<sup>5</sup> Internal data for 2016/17 showed that approximately 12% of pre-action letters to the Parole Board resulted in JRs (26 JRs out of 214 pre-action letters). However, we acknowledge that some pre-action letters may be dealt with internally by the Parole Board before they are formalised, so this total volume could be an underestimation.

<sup>6</sup> Clearly this is not the case for victims who will be able to apply for reconsideration of a decision at any stage.

<sup>7</sup> Data from Parole Board Annual Review 2016/17. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631425/Parole Board Annual Review Web Accessible Version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/631425/Parole_Board_Annual_Review_Web_Accessible_Version.pdf)

## Monetised costs

### Implementation costs

21. There is no monetised implementation cost identified with reconsideration for this IA. They have been discussed in the non-monetised costs.

### Ongoing costs

22. The total monetised cost of a case progressing through the internal reconsideration mechanism would consist of costs described below.

### *Eligibility check*

23. **Administrative unit costs:** The Parole Board administrative staff and members would check the eligibility of a case when an application is received for reconsideration of a parole decision. It is assumed that it would take 2 hours per case<sup>8</sup> for the Parole Board to complete administrative checks of an application for reconsideration. Salary information provided by the Parole Board. This does not include non-wage costs such as NI and other employee associated costs and is likely to be an underestimation. This IA uses the hourly cost of an HEO banded staff member who is assumed to do the administrative functions. A HEO staff member would cost £32,500 per year<sup>9</sup>. This generates an hourly unit cost for administrative eligibility checking of £18. A senior administrative staff member may be required to provide guidance to those checking reconsideration cases. However, the exact management structure and details have not yet been scoped and therefore, the cost of any additional management staff has not been scoped or monetised.
24. **Panel member unit costs:** It is assumed that conducting eligibility checks will require 2 hours of panel member time per case. This assumption has been used since it currently takes approximately 2 hours for panel members to conduct a paper hearing (i.e. to review a case and make a decision on the papers). It is assumed that it will take the same length of time for a panel member to review eligibility for reconsideration as it would to make a decision on the papers in a paper hearing. On average, panel members are paid approximately £46 per hour, meaning the unit cost of a panel member eligibility check is £92 per application. This unit cost assumption was provided by the Parole Board.
25. Table 2 shows the annual cost estimates for checking the eligibility of each case, assuming a range of engagement scenarios (i.e. the proportion of paper decisions made that would be rereferred).

**Table 2: Estimated annual costs of conducting eligibility checks**

Engagement scenario	Total volume applicable for the reconsideration mechanism	Administrative check costs	Panel member costs of conducting eligibility checks	Total costs of eligibility checks
5%	687	£30,000	£70,000	£100,000
10%	1,374	£60,000	£150,000	£200,000
15%	2,061	£90,000	£220,000	£300,000

### *Repanelling the case for a reconsideration hearing*

<sup>8</sup> This is an MOJ internal assumption, the Parole Board have said that there could be a large range in administrative checking time, potentially from 30 minutes to a full day.



26. **Re-panelled hearing unit costs:** If the application for reconsideration meets the reconsideration threshold, it will be re-panelled either by an oral or paper hearing. If it does not meet the threshold, then the applicant will be informed and a JR would remain an option for the individual. Scenarios of 10%, 20% and 30% success rates in meeting the reconsideration threshold have been tested. For the scenario modelling below, it is assumed that if a reconsideration application is successful, it would be panelled for an oral hearing. There is limited information to inform an assumption on the split of repanelled hearings that would be heard on paper or orally. In this IA, therefore, it has been assumed that all repanelled cases would be heard orally, to represent an upper bound cost estimate. In 2016/17 the unit cost of an oral hearing was £1,706, according to the latest published Parole Board annual report<sup>1</sup>.
27. Table 3 shows the annual cost estimates for hearing each case which successfully meets the threshold criteria (assuming all hearings are held orally), for a range of threshold success scenarios.

**Table 3: Estimated annual costs of the Parole Board repanelled hearings to consider an application for reconsideration**

Engagement scenario	Volume of reconsiderations	10% of cases meeting the threshold		20% of cases meeting the threshold		30% of cases meeting the threshold	
		Volume	Hearing costs	Volume	Hearing costs	Volume	Hearing costs
5%	687	69	£140,000	137	£270,000	206	£410,000
10%	1,374	137	£270,000	275	£540,000	412	£810,000
15%	2,061	206	£410,000	412	£810,000	618	£1,210,000

28. **Secretary of State representation:** For some reconsideration cases which are panelled, a Secretary of State representative may be required to attend. On average, approximately less than 1% of Parole Board hearings currently require Secretary of State representation. However, it has been assumed that, with the introduction of the Secretary of State representation recommendations (which were a separate part of the recent parole review), the number of cases in which an SoS representative is present would increase. Therefore, an estimate of 3% has been used for the modelling below to generate an upper-bound cost. The hourly cost of this representative is £24, based on the staff costs of a Senior Probation Officer. It is assumed that the representative would need to travel to the parole hearing. Therefore, the total unit cost of a Secretary of State representative includes the cost of travel and subsistence and is estimated at £170.
29. Assuming 3% of reconsidered repanelled hearings would require this and an average oral hearing lasts approximately 3.5<sup>10</sup> hours with an additional 3 hours (approx.) traveling time, the total annual cost of Secretary of State representation in reconsidered hearings would be £2,000 in steady state at the 5% engagement rate with 10% of cases meeting the threshold and £20,000 in steady state at the 15% engagement rate with 30% of cases meeting the threshold. **Therefore, the range of total costs for Secretary of State representation in steady state is estimated to be between £2,000 and £20,000 per year.**
30. **Legal aid:** There may also be some legal aid costs of bringing a case forward for reconsideration. The total estimated cost per case of providing legal representation to an offender facing a Parole

<sup>10</sup> This is based on an average of 2 oral hearings being heard on one 7-hour day

Board hearing is £1,900 on average<sup>11</sup>. This includes all advocacy assistance at a Parole Board hearing. It is unclear how many prisoners might require legal representation at hearings under the new reconsideration mechanism. Based on legal aid claims data and total cases heard in 2015/16<sup>12</sup>, it was assessed that approximately 70% of oral hearings on average received funding for legal aid representation. Therefore, for cases meeting the threshold check and being repanelled orally, a 70% assumption has been applied to legal aid applicability.

**Table 4: Estimated annual cost of Legal aid advice and representation**

Engagement scenario	Volume of reconsideration applications	10% of applications meeting the threshold		20% of applications meeting the threshold		30% of applications meeting the threshold	
		Volume	Total legal aid cost	Volume	Total legal aid cost	Volume	Total legal aid cost
5%	687	69	£110,000	137	£210,000	206	£320,000
10%	1,374	137	£210,000	275	£420,000	412	£630,000
15%	2,061	206	£320,000	412	£630,000	618	£950,000

31. **HMPPS preparation costs for oral hearings:** The cost of case preparation for the HMPPS staff involved in contributing to the offender's parole hearing has been estimated using the annual total costs of the HMPPS staff involved in the process. Case preparation requires 36 hours of an offender manager, 15 hours of an offender supervisor, 4 hours of a prison psychologist and 1.5 hours of a prison escort. An oral case hearing requires the offender manager, offender supervisor and psychologist to be present. The total process including travel requires 7.24 hours of their time per oral hearing. The offender manager requires some additional travel and accommodation requirements. This additional package of costs has been shown in the table below.

**Table 5: Estimated annual cost of HMPPS staff preparing and attending oral hearings**

Engagement scenario	Volume of reconsideration applications	10% of cases meeting the threshold		20% of cases meeting the threshold		30% of cases meeting the threshold	
		Volume	HMPPS costs	Volume	HMPPS costs	Volume	HMPPS costs
5%	687	69	£140,000	137	£270,000	206	£410,000
10%	1,374	137	£270,000	275	£550,000	412	£820,000
15%	2,061	206	£410,000	412	£820,000	618	£1,230,000

### **Non-monetised costs**

<sup>11</sup> Based on internal Legal Aid Agency data on average value of legal aid claims for prisoner law representation at oral parole hearings for the financial year 2016/17.

<sup>12</sup> An assumption on the proportion of prisoners receiving legal aid representation at oral hearings has been based on 2015/16 data because this is the latest year for which data is available on both volume of parole hearings and legal aid claims. It is possible that there could be a lag in the legal aid claims data, but this assumption is based on the latest information available.

32. The costs below have not been monetised as further scoping work is required.

#### Implementation

33. **Staff training and recruitment costs:** There will be training costs associated with prison lawyers, Victim Liaison Officers (VLOs) and Offender Managers learning about the new reconsideration mechanism and associated legal details. This training would need to be developed and then given by the Parole Board. At this early stage, the training and development costs are not known because the programme has not been designed.
34. The Parole Board will also need to train the administrative staff conducting initial eligibility checks to ensure that all cases are being considered by a uniformly enforced standard. More staff may need to be hired for this process (depending on application volumes) and so there may also be a one-time recruitment cost associated with this.
35. **Awareness raising:** The Parole Board may need to raise awareness of the new mechanism with the legal community and other affected parties (this could also include victims if they are in scope).
36. **Legal Aid Agency management information system costs:** Amending the Parole Board reconsideration process may require further consideration on whether Legal Aid processes will also need to change. Likely impacts would be changes to the IT system and processing costs. It is not possible to monetise any such amendments at this stage without further policy development.
37. **Management information system:** The Parole Board would look to develop a digital platform to store reconsideration records online. This may be integrated into the Public Protection Unit Database (PPUD). Due to uncertainties around volumes of reconsideration cases, this cost has not yet been monetised.

#### Ongoing

38. **Backlog and compensation costs:** As cases which are brought forward for reconsideration must be dealt with immediately, the new mechanism might result in previously scheduled Parole Board hearings (i.e. hearings that are not dealing with reconsideration) being pushed further back. We will mitigate this as much as possible. Although the requests for reconsideration can be dealt with quickly, as this is an internal PB process, there are many factors that influence the time it takes to set up a new oral hearing. This is because of availability of witnesses and facilities to hear the case in prisons, as well as case preparation time. If this were to happen, then there may be some impact on the Parole Board's caseload which could result in a backlog (and therefore pay-outs of compensation). As of March 2017, there were approximately 2,000 cases in the Parole Board's backlog and the Parole Board paid approximately £0.9m in 2016/17 in compensation payments to prisoners for delays.<sup>13</sup> However, if the Parole Board can list more hearings in any given time period to accommodate the reconsideration cases, then this impact can be minimised. Due to the uncertainties surrounding reconsideration application volumes and listing practices, the cost has not been monetised for this IA.
39. **Publishing information about panel members:** There is likely to be a small cost associated with publishing details about panel members who make reconsidered parole release decisions. However, at this stage, the cost of doing so has not been monetised for this IA.
40. **Resources needed when members of the public choose to attend an oral hearing:** There is likely to be an additional cost in terms of prison escort staff if members of the public choose to attend

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<sup>13</sup> Parole Board Annual Report and Accounts 2016/17.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631425/Parole\\_Board\\_Annual\\_Review\\_Web\\_Accessible\\_Version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631425/Parole_Board_Annual_Review_Web_Accessible_Version.pdf)

an oral hearing. However, due to uncertainties in volumes of cases where this would occur, this cost has not been monetised for this IA.

41. **VLO case preparation costs:** A Victims Liaison Officer works within a probation team to provide information to victims on the parole process, the offender's progression through the prison and parole system and support victims if they are involved in the process (for example, making a Victim Personal Statement). If victims bring forward a reconsideration case which is then re-panelled, there may be an additional cost to VLOs of helping victims draft their personal statements for the additional hearing. However, due to uncertainty around the volumes of these cases and an open question as to who can apply for reconsideration, this cost has not been monetised. As well as the costs associated with an additional hearing, there are also witness preparation, travel and administrative costs which cannot be quantified due to volume uncertainties.
42. **An increase in oral hearings:** The internal reconsideration mechanism will only be available to offenders in cases where all other routes of hearing have been exhausted. As a result, offenders applying for reconsideration after a paper hearing would be first directed to request an oral hearing before pursuing reconsideration. This might, therefore, result in more oral hearing requests being made to the Parole Board with possibly more hearing requests being successful. Due to the uncertainties around the volumes of these cases, the associated administrative checking costs and oral hearing panelling costs have not been monetised.
43. **Prison place impacts:** There are some process changes which need to be put in place to allow an reconsideration mechanism to be established. One of these changes is to make the Parole Board decision provisional. This work is currently in the early development stages and has not been quantified yet as a more complete understanding of the possible changes to the prison to parole decision process is needed to articulate the impacts. However, it is possible that by making Parole Board decisions provisional, which could be done through changing the PBR, the total time spent in prison by an offender might increase. This is because it takes a set amount of time for the parties with standing to review the decision and to challenge it which has not yet been decided. There may also be some human rights implications for delay or keeping the prisoner detained whilst the reconsideration decision is being made.
44. Therefore, under this option, there could be potential prison place impacts. Some of the factors which would impact the total prison cost are outlined below but we will seek to mitigate this as much as possible:
  - a. **The current estimated average time between a parole decision and actual release:** Early work in understanding delays in offender release conducted in 2017 show that median time between the Parole Board decision and the release of an offender from prison is approximately 16 days<sup>14</sup>. However, further analysis of the distribution of this data shows that the average is much higher (at 25 days). The mean is higher than the median as it is driven by outlier cases which experience much longer delays. To understand these delays, some of these cases were chosen at random to explore further. The most common reason for delay was the time taken in securing appropriate accommodation for the offender.
  - b. **Behavioural changes elsewhere in the justice system:** The prison place impact could be exacerbated if there are behaviour changes within the prisons and probation system. Although, release planning will be instructed to continue as normal, if probation services decide to prioritise the release of cases which have passed the provisional decision threshold (and therefore are no longer eligible for reconsideration), then the delay between the parole release decision and the actual release of the offender may increase. Point a above highlights that the likely cause of delay is often secure accommodation, it is possible that HMPPS staff will prioritise this accommodation to cases past the provisional window to minimise risk of accommodation being allocated to an offender who may be facing reconsideration.

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<sup>14</sup> Based on an internal unpublished analysis of 2,700 cases where parole release decisions were made.

- c. **Possible accommodation impacts associated with behaviour change:** If there is no behavioural change associated with the release decision becoming provisional, then HMPPS staff would be allocating accommodation placements for offenders during the provisional decision window. As the above scenario tests assume that a small percentage of these cases will be brought forward for reconsideration, it is possible that there is a resettlement cost associated with the allocation of a bed to an offender who then is not able to occupy it. Due to uncertainties around the volume and process of reconsideration within the prisons and probation system, this cost has not been monetised for this IA.

## Benefits of Option 1

### *Monetised benefits*

45. It has not been possible to identify monetised benefits arising from the likely impacts of this option.

### *Non-monetised benefits*

46. **Diversions from JR:** The internal reconsideration mechanism could deter people from using a JR to challenge a parole decision. It has not been possible to quantify the unit cost of the JR review as this data is not available. It is also not possible to quantify the volume of cases which would be diverted so this benefit has not been monetised.
47. **Diversions from PPCS re-referral process:** Some cases which were previously being reconsidered through the PPCS re-referral process may now come directly to the Parole Board. Currently the PPCS submits approximately 50 cases per year for re-referral to the Parole Board. On average, these cases take 3 to 4 hours of administrative staff time. However, it is not possible to quantify the volume of cases which would be diverted so this benefit has not been monetised.
48. **Giving victims and others a greater input:** An internal reconsideration mechanism which is open to victims and others would promote a fairer justice system as victims will be able to apply for parole decisions to be reconsidered without needed to pay to do so (as per JR).

## Net quantifiable impacts of Option 1

49. **Steady state annual costs:** The estimated indicative range of costs of introducing a reconsideration mechanism could be between **£0.5m** (with low engagement and a low rate of success at threshold) and **£3.7m** (with high engagement and a high rate of success at threshold) per year in steady state. This is subject to the assumptions mentioned above and the risks detailed below. It should be noted that the prison place impact has not been included in this estimate.
50. **Net Present Cost:** As the benefits of the base case have not been quantified, the total net present cost of option 1 is estimated to be between £4m - £32m over 10 years with a 3.5% yearly discount rate and 15% optimism bias. No ramp-up profile has been used in the costing of the NPC as the policy is still currently subject to uncertainty and it is not known how the policy may embed. It is assumed, therefore, that steady state volumes are reached in year 1 of the appraisal period.

## Summary and preferred option

51. In steady state, a range of annual cost estimates has been provided for this option to reflect the uncertainty in anticipated volumes described above. These are summarised in Tables 6 and 7 below.

**Table 6: Steady state per annum cost estimate with low volume scenarios**

Agency	Cost description	Low cost/volume scenarios:	Total cost
Parole Board	Eligibility checking cost	Assuming 5% of all PB cases request for reconsideration	£90,000
Parole Board	Repanelled hearing costs	Assuming 10% of requests meet the threshold and get repanelled	£120,000

<b>Legal Aid Agency</b>	Legal services	Assuming <b>70%</b> of the repanelled cases require legal aid	<b>£90,000</b>
<b>PPCS</b>	Cost of SOS representative traveling to and appearing at PB hearing	Assuming <b>3%</b> of repanelled cases require an SOS rep	<b>£1,000</b>
<b>HMPPS</b>	Cost of case preparation and hearing	Assuming <b>all</b> repanelled cases require preparation and hearing costs	<b>£120,000</b>
Total per annum cost in steady state with low volume and low threshold success			<b>£420,000</b>
Total per annum cost in steady state with low volume and low threshold success, <b>including 15% Optimism Bias</b>			<b>£480,000</b>
<b>10-year Net Present Cost with 15% Optimism Bias and 3.5% annual discounting</b>			<b>£4,120,000</b>

**Table 7: Steady state per annum cost estimate with high volume scenarios**

<b>Agency</b>	<b>Cost description</b>	<b>High cost/volume scenarios</b>	<b>Total cost</b>
<b>Parole Board</b>	Eligibility checking cost	Assuming <b>15%</b> of all PB cases request for reconsideration	<b>£260,000</b>
<b>Parole Board</b>	Repanelled hearing costs	Assuming <b>30%</b> of requests meet the threshold and get repanelled	<b>£1,060,000</b>
<b>Legal Aid Agency</b>	Legal services	Assuming <b>70%</b> of the repanelled cases require legal aid	<b>£820,000</b>
<b>PPCS</b>	Cost of SOS representative traveling to and appearing at PB hearing	Assuming <b>3%</b> of repanelled cases require an SOS rep	<b>£3,000</b>
<b>HMPPS</b>	Cost of case preparation and hearing	Assuming <b>all</b> repanelled cases require preparation and hearing costs	<b>£1,070,000</b>
<b>Total per annum cost in steady state with high volume and high threshold success</b>			<b>£3,210,000</b>
<b>Total per annum cost in steady state with high volume and high threshold success, including 15% Optimism Bias</b>			<b>£3,690,000</b>
<b>10-year Net Present Cost with 15% Optimism Bias and 3.5% annual discounting</b>			<b>£31,800,000</b>

## **F. Risk and Sensitivity analysis**

### **Sensitivity analysis**

52. It has been assumed that all parole hearings will be dealt with orally. Sensitivity analysis has been conducted to show how the total cost could vary if all hearings were to be conducted on paper (i.e. no oral hearings) or if 50% were to be conducted on paper and the remaining 50% by oral hearing.

53. The costs differ between these scenarios as there are differences to the work flows of the Parole Board, Legal Aid Agency and HMPPS in hearing and preparing the case. To the Parole Board, the cost of conducting a paper hearing is estimated at £315.<sup>15</sup> For the Legal Aid Agency, although the total cost of representing an offender at hearing as above (£1900) does not apply, there is a case preparation fee of £200 applied to paper hearings. For HMPPS staff, no attendance is required at oral hearing and only preparation costs apply. There would also be no cost of an SoS representative at a paper hearing. No optimism bias has been applied to the tables below.

**Table 8: Sensitivity analysis on the low engagement/eligibility scenario**

Agency	Low cost/volume scenarios: assuming 5% of all cases come forward for reconsideration and 10% of these cases are repanelled.		
	Cost of repanelled all hearings as paper hearings	Cost of repanelled 50% of hearings as paper hearings and 50% as oral hearings	Cost of repanelled all hearings as oral hearings (scenario presented in IA)
<b>Parole Board</b>	£30,000	£80,000	£140,000
<b>HMPPS</b>	£90,000	£110,000	£140,000
<b>Legal Aid</b>	£20,000	£60,000	£110,000
<b>PPCS</b>	£0	£0	£1000
<b>Total steady state per annum cost</b>	<b>£230,000</b>	<b>£360,000</b>	<b>£480,000</b>

**Table 9: Sensitivity analysis on the high engagement/eligibility scenario**

Agency	High cost/volume scenarios: assuming 15% of all cases come forward for reconsideration and 30% of these cases are repanelled.		
	Cost of repanelled all hearings as paper hearings	Cost of repanelled 50% of hearings as paper hearings and 50% as oral hearings	Cost of repanelled all hearings as oral hearings (scenario presented in IA)
<b>Parole Board</b>	£220,000	£720,000	£1,210,000
<b>HMPPS</b>	£810,000	£210,000	£1,230,000
<b>Legal Aid</b>	£140,000	£120,000	£950,000
<b>PPCS</b>	£0	£2000	£3000
<b>Total steady state per annum cost</b>	<b>£1,490,000</b>	<b>£2,580,000</b>	<b>£3,690,000</b>

<sup>15</sup> Unit cost of a paper hearing in 2016/17 taken from the Parole Board's Annual Report and Accounts (p.45).  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631425/Parole Board Annual Review Web Accessible Version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631425/Parole_Board_Annual_Review_Web_Accessible_Version.pdf)

## Risks and assumptions

54. The estimated cost and benefit impacts presented in this IA are based on a range of assumptions, some of which are inherently uncertain. Consequently, each of the impacts in this IA are subject to a degree of risk. The assumptions and the associated risks are described in Table 8 (below).

**Table 10: Assumptions and Associated Risks**

<b>Assumptions</b>	<b>Associated risk</b>
<b>Volumes: 2016/17 paper hearings volumes from the Parole Board Annual Report have been used as base figures for the cost modelling. In 2016/17, there were 13,709 paper hearings held by the Parole Board.</b>	There is a risk that actual volumes will deviate from figures used in the above modelling. The costs could be either under or over estimated.
<b>Costs: Unit costs for both the administrative staff and the panel member have been provided by the Parole Board. Administrative staff equivalent to HEO: £18 per hour.  Panel member staff: £46 per hour.</b>	There is a risk that actual costs for the next fiscal year will deviate from figures used in the above modelling. The costs could be either under or over estimated.
<b>Time required per case is an MOJ internal assumption.</b>  1. <b>Administrative staff: 2 hours per case.</b>  <b>Panel member staff: 1 hour per case.</b>	There is a risk that the actual time taken to conduct eligibility cases could vary widely between one case and the next. The figures used in the above modelling may be over or under estimations.
<b>Cost of a hearing has been obtained from the Parole Board Annual Report 2016/17.</b>  2. <b>Oral hearing: £1,706</b>  <b>Paper hearing: £315</b>	It is possible that the unit cost for Parole Board hearings will fluctuate in the next fiscal year. The figures used in the above modelling may be over or under estimations.
<b>The hearing panelled for successful cases is an MOJ internal assumption. It has been assumed for cost modelling purposes that all hearings will be panelled orally. However, it is possible that some will be panelled by paper (leading to a cost savings).</b>	It is likely that some cases will be panelled by paper rather than orally as is assumed to be the case for all cases in the above IA. Therefore, it is possible that the costing above is an overestimation. The table below shows sensitivity analysis around the total steady state cost figures if all hearings were to be conducted on paper and also if 50% of hearings were to be conducted on paper and 50% held orally.
<b>Current JR figures: The threshold rate for success at JR has been obtained from the Parole Board Annual Report 2016/17 which indicates that in 2016/17, out of 214 cases reviewed, only 26 met the JR threshold.</b>	The current JR success rate has been used to benchmark success rate scenarios in the reconsideration costing. There is a risk that this success rate does not apply directly to the new reconsideration mechanism (despite having similar grounds). Therefore, it is possible that the figures used in the above modelling may be over or under estimations.
<b>There is no behavioural change in the decision making at Parole Board hearings.</b>	There is a risk that the development of a internal review mechanisms may result in panel members considering their work to be under greater scrutiny. This might impact on their decision making behaviour,



	potentially making them more risk averse.
<b>Legal aid costs: it has been assumed that unit cost for legal aid will remain broadly similar as they were in 2016/17. We have also assumed that the proportion of oral and paper cases receiving legal aid will remain broadly similar as it was in 2015/16.</b>	It is possible that the legal aid costs and the proportions of cases eligible for legal aid will fluctuate in the next fiscal year. The figures used in the above modelling may be over or under estimations.
<b>HMPPS case preparation time: Internal assumptions have been used to generate case preparation times. These are based on the case preparation times of an oral hearing. It has also been assumed that no seconded offender managers will act as offender supervisors for the case preparation.</b>	It is possible that these predictions and their related costs will differ in relation to reconsidered hearings. It is difficult to predict the direction of this change. The figures used in the above modelling may be over or under estimations. Seconded offender managers can in some cases perform the case preparation duties of an offender supervisor. This requires more time on average at a higher salary band. Therefore, the above figures may be underestimating the total cost to HMPPS from reconsideration.
<b>No ramp-up profile has been used to cost the NPC.</b>	There is a risk that the growth of costs over time is being modelling incorrectly. It may be that there are higher volumes of cases applying for reconsideration initially which then reduce as more people become accustomed to the process. It may also be possible that volumes of applicants will grow slowly until the steady state is reached. The figures in the above modelling may be over or under estimations as this cannot be predicted.

### **Direct costs and benefits to business calculations (following OITO methodology)**

55. There are no costs or benefits to private sector companies or charities from this policy.

### **Wider impacts**

56. We have considered impacts on various groups affected including protected characteristics. Please see the Equalities Statement for more details.

## **G. Implementation**

57. Provisions for the preferred option outlined in this IA are subject to consultation. Responses to the consultation will be used to inform planning for implementation of any measures brought forward. Further announcements about this will be made in due course.

## **H. Monitoring & Evaluation**

58. The preferred option would be reviewed as part of the consultation. We will issue a response to the consultation in due course.