

Title: LASPO Amendments: Review of Indeterminate Sentences for Public Protection (IPPs); clarifying the law on self defence; and increasing the Magistrates' Court fine limit IA No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)		
	Date: 25/10/2011		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
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Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			In/Out/zero net cost

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

The IPP regime has not worked as intended. IPP sentences are unclear, inconsistent and have been used far more than was ever intended by Parliament when the sentence was created. They were designed as a way to protect the public from serious offenders but have been used far more widely than intended. They have been handed down at a rate of more than 800 a year and more than 6,500 offenders are currently serving IPP sentences. IPPs have proved difficult to understand and leave victims and their families uncertain about how and when an offender will be released. IPPs have also led to inconsistent sentencing -they have been given to some offenders, while others who have committed similar crimes have served fixed sentences.

What are the policy objectives and the intended effects?

Our central objective is to replace IPPs with a new coherent sentencing framework for serious sexual and violent offences, which is not overly complex and more easily understood by the public than the IPP sentence. It needs to be justifiably tough and be seen to punish offenders effectively, and it must maintain public protection measures. Alongside sufficiently punishing offenders, we must also ensure that sexual and violent offenders undertake work to address their offending behaviour with the purpose to rehabilitate as part of their sentence.

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

- Option 0- Do nothing
- Option 1: Introduce a new sentencing framework. (See further evidence base)

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** We will undertake an initial review approx 3 years post implementation to examine how this sentences are being used by the courts. Full impacts cannot be realised in the short term given the average long lengths of these sentences and the sentences they are replacing.

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

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: 27/10/2011

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

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

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

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

We do not estimate any additional monetised costs or impacts incurred by the Government as a result of these policy options.

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

There may be some non-monetised costs to NOMS through implementing non-legislative recommendations which are already set in train; these will be absorbed within existing capacity. Other non-monetised impacts will be handled as part of future work to implement the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill provision e.g. judicial training for new provisions.

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

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

This policy is not estimated to deliver savings in this Spending Review (SR) period (to March 2015) or the next SR period (to March 2019). It is estimated to slow the growth in the prison population by 2,500 places in the longer term when compared with the do nothing estimate. In the do nothing case we estimate the prison population to reach 85,800 by the end of the current SR period; 87,600 by the end of the next SR period; and 90,000 in the longer term.

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

We expect likely benefits to society, and in particular victims of crime, through the introduction of new framework which will provide greater clarity around what punishment an offender receives and how long they will spend in custody. It will remove disparity between indeterminate and determinate sentences whereby some offenders may be subject to an IPP whilst others who commit similar offences may receive long determinate sentences instead.

Key assumptions/sensitivities/risks

Discount rate (%)

The long term reduction in demand for prison places has been estimated using a series of assumptions about judicial and Parole Board decision making following the introduction of the policy proposals. If actual decision making differs from these assumptions, the likely monetised benefits will also differ. It is assumed that the main monetised benefits come from savings made through reduced capacity in the criminal justice system.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	IN/OUT/Zero net cost

Introduction

1. The Ministry of Justice tabled Government amendments at the Commons Report stage of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill to abolish IPPs and to take forward provisions to reform how the criminal justice system punishes, sentences and rehabilitates serious sexual and violent offenders. This impact assessment therefore accompanies the Government amendments to abolish IPPs as well as amendments to clarify the law on self defence and increase the Magistrates' Court fine limits.
2. The Ministry of Justice Green Paper *Breaking the Cycle* published in December 2010 consulted upon proposals to limit IPPs to a smaller category of offences. The consultation made clear that there are many problems with the IPP sentence, in particular with issues surrounding inconsistency and uncertainty. IPPs have proved difficult to understand and leave victims and their families uncertain about how and when an offender will be released. IPPs have also led to inconsistent sentencing - they have been given to some offenders, while others who have committed similar crimes have served determinate sentences.
3. This makes the sentencing framework unclear and difficult to explain, as well as defend to the public. A return to a definite, more balanced principle of punishment for crime committed which will restore clarity, coherence and common sense to sentencing, is therefore desirable.

Organisations in the Scope of the Proposals

4. The proposals as set out in this Impact Assessment will have effect in England and Wales only. The main groups affected by these proposals are:
 - Ministry of Justice (MoJ) and arms length bodies, including:
 - National Offender Management Service
 - Her Majesty's Courts and Tribunals Service
 - Legal Services Commission
 - Sentencing Council
 - Parole Board
 - Crown Prosecution Service
 - Home Office
 - HM Treasury
 - Police Forces
 - The Judiciary
 - National Assembly for Wales
 - Potential victims of crime
 - Members of the public
 - Offenders

Principles Underpinning Cost Benefit Analysis

5. This Impact Assessment identifies as far as possible both monetised and non-monetised impacts with the aim of understanding what the net impact on society might be from changes to IPPs. Where policy details of the proposals are yet to be finalised, this Impact Assessment contains no detailed quantification of costs and benefits. We will update our estimate of the impact on costs and benefits of those policies as these are developed further.
6. Cost benefit analysis in this Impact Assessment is interpreted broadly, to include both monetised and non-monetised costs and benefits, with due weight given to those that are non-monetised.
7. The geographical scope of this Impact Assessment is England and Wales.

8. There are a small number of areas for which there is not sufficient data to quantify the costs and benefits. In these cases we have identified what we believe the costs and benefits to be without producing a quantitative estimate.

Structure of the Impact Assessment

9. The next section sets out the 'base case': the assumptions the Government has made about future trends if none of the provisions in the Government's amendments are implemented, and there is no change in policy and practice. The Impact Assessment then proceeds to briefly set out the range of possible ways in which the current framework could be reformed; the constraints that limit the available option set; and presents an assessment, where the evidence permits, of the estimated costs and benefits to society of the policy proposals.

Option 0: Do nothing

10. The base case sets out the assumptions the Government has made about future impacts if no action is taken to reform IPPs.
11. IPPs and the youth equivalent -- the Detention for Public Protection sentence -- were introduced through the Criminal Justice Act 2003 in April 2005, with the purpose of detaining in prison, the 'most dangerous, violent and sexual offenders' who pose a significant risk to the public of causing serious harm until they no longer pose such a risk. The offender can only be considered for release once they have completed their 'tariff' or minimum custodial term, which reflects the appropriate punishment for their crime. Subsequently they are only released when the Parole Board is satisfied that it is safe to do so.
12. By 2006, the sentence had been used much more widely than had been intended and a considerable proportion of those sentenced to IPPs had relatively short tariffs of two years or less. Changes in the Criminal Justice and Immigration Act (CJIA) 2008 restricted the use of IPPs and DPPs to those who would merit a minimum four year determinate sentence (i.e. a minimum two year tariff) and gave increased discretion to the courts over its use. However, the issues around the lack of clarity and inconsistency around the current system still remain.
13. Balanced sentencing: Without any changes to the IPP sentence, the current situation will continue to be unclear to the public and victims, particularly in the respect of the time offenders will serve in custody and why some offenders receive an IPP whilst others receive a determinate sentence.
14. Prison pressures: The base case assumes that existing provisions in the LASPO Bill to reform sentencing are implemented without any changes to the existing IPP regime¹. Beyond the changes in the LASPO Bill the base cases assumes no change to current sentencing and offender management policy or delivery. Under the base case, offender populations and their offending profiles are assumed to remain unchanged from the latest historic data available.
15. To estimate the prison population to the end of this SR period we have used the published medium projection of prison population², adjusting for the impacts of the LASPO Bill. Beyond this SR period we have projected the underlying IPP population accounting for historic sentencing trends. For the remainder of the prison population, we have extrapolated the population trends underlying the published medium forecast, adjusting for the LASPO Bill impacts. In the absence of reform we estimate the prison population to reach 85,800 by the end of the current SR period; 87,600 by the end of the next SR period; and 90,000 in the longer term.
16. Parole Board pressures: We estimate that in the absence of reform there will be a growing demand for parole hearings, with approximately 4200 IPP offenders eligible for referral to the Parole Board at the end of this SR period; 5,400 at the end of the next SR period (March 2019); and 7,600 in the longer term.

¹ With the exception of changes that will allow deportation of foreign national IPP prisoners on tariff expiry.

² We have used those published in August 2010. Future versions of the impact assessment will use the most up to date version of the prison projections.

Routes for reform

17. There are a number of options for reform of the current IPP framework for dealing with the most serious sexual and violent offenders. The following lays out the two broad avenues for reform:
18. *Restrict the use of IPPs:* We consulted on the option to restrict the use of IPPs as set out in the *Breaking the Cycle* Green Paper. In the accompanying Impact Assessment we stated that there would be no impact on the prison population in this SR period but a potential for sizeable long term benefits. We estimate that this option slows the growth in the demand for prison places by approximately 1,100 places by the end of the next SR period (end of 2018/19) and 4,500 places in the longer term.
19. However the consultation made clear that there are many problems with the IPP sentence and we do not believe that retaining IPPs, albeit in this limited form, will eradicate these problems. It also would not help clarify the sentencing framework and therefore greater command public confidence.
20. *Abolish IPPs:* Where IPPs would no longer be available to sentence serious sexual and violent offenders we have considered a number of ways for achieving our objectives for a tough, effective replacement regime:
- *Introduce a new mandatory life sentence:* Currently the only sentence that attracts automatic life is murder. We have considered extending mandatory life for the most serious violent and sexual repeat offenders for whom it would be justifiable to apply such a punishment.
 - *Introduce a new determinate sentence:* We have considered the option of replacing the IPP with a determinate sentence under which it would be clearer what punishment the offender receives and how long they will spend in prison. To be sufficiently tough, the offender must serve longer in prison than they would under a current standard determinate sentence.
 - *Parole Board Release:* In combination with a new determinate sentence where offenders serve more than half of their sentence, we have considered the extent to which the Parole Board should be involved in assessing whether the offender should be subject to release focused upon the most serious category of offenders who pose greater risk of further re-offending and, therefore, to the public.
 - *Extended Licence:* Considerable licence periods in the community should be available to continue to effectively manage offenders and apply effective public protection measures.
21. The large range of potential options is constrained by a number of important policy aims. The requirement of proposals are to abolish IPPs and create a new sentencing framework for serious sexual and violent offences, which:
- Replace IPPs with a coherent sentencing framework which is not over-complex and more easily understood by victims and the public.
 - Will be justifiably tough and can be seen to effectively punish offenders.
 - Must continue to protect the public from sexual and violent offenders.
 - Makes the period of incarceration more certain and establish clear delineations between sentences depending upon the severity of the offence and associated risk factors.
 - Will ensure that offenders undertake work to address their offending behaviour with the purpose to rehabilitate as part of their sentence.
 - Will ensure that we manage resource pressures into the next SR Period and beyond by keeping the prison population at roughly current levels.

Proposed Option: A new sentencing framework

22. In order to meet the criteria set out above we need a balanced sentencing framework incorporating elements from each of the options we have considered. The following proposals effectively address the criteria set out above.
23. Under a new sentencing framework we will introduce a “two strikes” policy so that a mandatory life sentence will be given to anyone convicted of a second serious sexual or violent offence where both offences merit sentences of ten years or more. We estimate that approximately 20 offenders per year will be given this new mandatory life sentence.
24. Discretionary life sentences will continue to be available as currently for other serious and violent offenders. We expect wider use of these sentences following abolition of the IPP.
25. We will create a new “extended determinate sentence” for offenders convicted of serious sexual or violent offences who would have previously been eligible for either an IPP or an Extended sentence for Public Protection (EPP). They will serve at least two-thirds of their sentence in custody and, in more serious cases, will only be released at the two-thirds point if the Parole Board assesses them as suitable; these offenders will only be subject to automatic release at the full term of their sentence.
26. The new sentence will be coupled this with extended licence periods following release: up to five years for violent offenders; eight years for sexual offenders. Any breach of their licence conditions during this extended period can result in an immediate return to custody for these offenders, so that when they are released from prison they will be monitored for long periods and returned to prison if necessary.
27. All offenders under this sentence will be required to follow a sentence plan including undertaking a range of targeted rehabilitative interventions, aimed at reducing their risk. Work will be undertaken to make interventions in prison more tailored to individual need which can be delivered in a number of different ways, including for offenders with complex needs such as learning disabilities. This will ensure that all offenders undergo rigorous assessments of need; that all methods of effective rehabilitation are considered and used; and that there is an enhanced focus upon sentence plan progression; offenders taking responsibility and action to reform, and reducing public protection risks.
28. The extended sentence will be available in addition to standard determinate sentences, and life sentences. It will replace both the current IPP and EPP sentence. So the new sentencing hierarchy for sexual and violent offenders will be:
 - Mandatory life
 - Discretionary life
 - Extended Determinate Sentence
 - Standard Determinate Sentence
29. This overall approach will also help simplify the sentencing framework, and make it easier to explain whilst ensuring that the courts continue have sufficient powers in place to continue to protect the public from sexual and violent offenders.
30. For the existing IPP population, the system in the past has struggled to put in place adequate steps to help reduce their risks, or for them to demonstrate that to the Parole Board for assessment of possible release. It is clear that for offenders whom the courts have determined pose a risk, sufficient interventions must be available to assist the offender in reducing those risks.
31. We therefore propose to undertake work in a number of areas to improve the management of the existing population and the processes which lead to a reduction in risk such as expanding the capacity of rehabilitative interventions for this group focusing priority interventions based upon risk. These measures will help us ensure more IPP offenders make progress and can demonstrate to the Parole Board that they can be safely released.

Costs

32. We do not estimate any additional monetised costs or impacts incurred by the Government as a result of these policy options. There may be some non-monetised costs to NOMS through implementing non-legislative recommendations which are already set in train; these will be absorbed within existing capacity. Other non-monetised impacts will be handled as part of future work to implement the LASPO Bill provision e.g. judicial training for all Bill provisions.

Benefits

33. A sentencing framework that is coherent and understandable providing certainty to victims and ensuring that justice is clearly seen to be done. It is not possible to monetise these impacts.
34. By reforming the sentencing framework in this way, we will remove existing uncertainty around the indefinite nature of IPPs. It is not possible to monetise this benefit.
35. Ensuring that all offenders under the new sentence are required to follow a sentence plan including undertaking a range of targeted rehabilitative interventions, aimed at reducing their risk will ensure that they undergo rigorous assessments of need; that all methods of effective rehabilitation are considered and used and that there is an enhanced focus upon sentence plan progression; offenders taking responsibility and action to reform, and reduce public protection risks.
36. Increasing the use of life sentences for the most serious sexual and violent offenders, and ensuring that other serious offenders spend long periods in custody - in many cases the full term of their sentence length - and imposing long licence periods will ensure that there are sufficient provisions in place to effectively manage risk and uphold public protection arrangements.
37. Impact on Prison Places: We estimate that there will be no impact on prison places in this SR period or the next SR period (to March 2019). It is estimated to slow the growth in the demand for prison places by approximately 2,500 places beyond in longer term (this is a population of 85,800 at the end of this SR period, 87,600 by the end of the next SR period and 87,500 in the longer term). On the simple assumption of the cost of a prison places in the longer term being £40,000 a year, this would lead to longer term, annual steady state, savings of £100m. However, actual financial costs of prison places in the longer term may differ from this affecting the potential savings.
38. Impact on the Parole Board: We estimate that there will be a reduced demand for parole hearings. Approximately 100 fewer per year eligible for referral to the parole board at the end of this SR period, 700 fewer at the end of the next SR period and 3,500 fewer in the longer term. We have not monetised these impacts at this stage.

Clarifying the Law on Self defence

39. This provision seeks to clarify the existing law on self defence to give the public greater certainty about acting in self defence, to prevent crime or to protect property. The law will be clarified by importing existing common law principles into statute. There is a public perception that the existing law does not give people sufficient protection when defending themselves or their properties from intruders. The Government believes that further clarification of the law would give members of the public greater confidence that the law is on their side. There is likely to be no or negligible impact on the CJS as this provision seeks to clarify the law rather than making material changes.

Increasing the Magistrates' Court fine limit

40. In the absence of changes in sentencers' behaviour, the only fines that can be expected to increase are those that are currently set at or very close to the maximum of £5,000 and that would have been set higher if not for the current limit. Analysis of Magistrates' Court fines in 2010 found that substantially less than 1% of fines are at or close to the maximum. For these small number of offenders or organisations fined by the court there could be increased revenue, although with the potential for additional enforcement costs. There is unlikely to be savings from retaining cases in the Magistrates' Courts by requiring fewer committals for sentence, because the numbers of fines close to or over £5,000 issued in the Crown Court is small.
41. More generally, there is a potential risk that by increasing the upper limit of fines this will serve as an indicator to sentencers to increase the level of fines generally, which might lead to increased revenue but there is also the potential for additional enforcement costs.
42. However, based on the evidence available, it is not anticipated that there will be a significant impact of raising the fine limits in the Magistrates' Court.