

Title: Protection of the Police and Public, Courts and Sentencing Bill: Changes to detention and training orders IA No: MoJ068/2020 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 17/12/2020			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: Katie Dougal (katie.dougal@justice.gov.uk)			
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2020 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£65.6m	N/A	N/A	Not a regulatory provision

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

The detention and training order (DTO) is the most frequently used custodial sentence for children. Under the DTO, a sentence can only be of specific fixed lengths (4, 6, 8, 10, 12, 18 or 24 months). However, these specific lengths restrict the court in deciding on the most appropriate sentence length, impacts on how time spent on remand or bail is taken into account, and on the reductions made for a guilty plea since one of the fixed lengths must be selected.

The fixed lengths also mean that time on remand or bail is subtracted from the whole DTO sentence, reducing time spent in custody and in the community whereas, for other youth sentences, the time on remand or bail is only subtracted from the time to serve in custody. There is also an inconsistency in the amount of early release an offender is eligible for when a DTO is served consecutively with another custodial sentence, meaning individuals may be eligible for differing amounts of early release based on the order of the sentences being served. There is therefore a need to ensure consistency between DTOs and other youth custodial sentences in application of remand, guilty plea discounts, and early release, and to give courts the freedom to choose the most appropriate sentence length for each case. Government intervention is required because making the necessary changes requires primary legislation.

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

The associated policy objectives are to: ensure the DTO is a more flexible sentence to allow the court to impose a sentence of the appropriate length; simplify how time spent on remand or bail is taken into consideration; allow a more accurate reduction for guilty pleas; and to remove an inconsistency in how early release eligibility is calculated when serving consecutive sentences.

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

Option 0: Do nothing: Make no changes to the existing arrangements concerning DTOs.

Option 1: Legislate to remove the fixed periods of DTO, amend remand and qualifying bail calculations and early release eligibility for consecutive sentences.

Option 1 is the preferred option as it best meets the policy objectives.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A

Does implementation go beyond minimum EU requirements?		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:

05 July 2021

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to remove the fixed periods of DTO and amend remand and qualifying bail calculations.

FULL ECONOMIC ASSESSMENT

Price Base Year 20/21	PV Base Year 20/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -41.2m	High: -65.6m	Best Estimate: -£65.6m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	£5.7m	£41.2m
High	Optional	£9.1m	£65.6m
Best Estimate		£9.1m	£65.6m

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

Removing the fixed-length nature of DTOs means that individuals receiving early guilty plea discounts may receive longer sentences than they currently do. While there will be no additional children sentenced to DTOs under this option, we anticipate that the increase in average sentence length may lead to a steady state increase in the youth custody population of around 30 to 50 places, costing around £5.3m to £8.5m per year. There would be an equivalent uplift in the number of children supervised in the community at any one time at a cost of around £0.4m to 0.6m per year.

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

Time spent on remand will be taken away from time to serve in custody as opposed to from the overall sentence length. There will be some individuals that spend longer on supervision in the community under this option, which would incur additional YOT costs. It has not proved possible to quantify these additional costs.

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

Description and scale of key monetised benefits by 'main affected groups' None

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

Removing the fixed lengths will give the judiciary the flexibility to give a sentence that means children will spend the appropriate amount of time in custody and in the community, rather than give a sentence of nearest available length. Reductions for guilty pleas will be more accurate as the judiciary will no longer be restricted to giving the nearest, lowest available DTO length. The time that a child has spent on remand or bail will also be more accurately reflected in the sentence length, because the judiciary will be able to deduct the exact amount of time and not be restricted to one of the fixed lengths. Removing the fixed lengths also means that time spent on remand or bail will only be deducted from the custodial part of the sentence and children will spend the intended amount of time in the community. Children serving DTOs consecutively with other custodial sentences will be eligible for the total amount of early release regardless of the order of the sentences, meaning some children may be released from custody earlier than they otherwise would have. The specific circumstances impacted by this change are rare and there is not likely to be a significant overall impact.

Key assumptions/sensitivities/risks	Discount rate (%)
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3.5%

Modelling is based around assumptions of how the judiciary might respond to the removal of DTO fixed lengths which is inherently difficult to predict. Whilst we have constructed a plausible scenario concerning this, the actual outcomes may differ.

Our main assumptions include:

- Without fixed terms, sentence lengths will be uniformly distributed around the existing fixed points.
- At present, if an early guilty plea discount leads to a sentence length between fixed points, the lower sentence is given (as per sentencing guidelines). Under Option 1 the exact sentence length after applying the discount is given.
- Under the high scenario, we assume around 90% of children sentenced to DTOs plead guilty and all receive discounts for early guilty pleas, under the low scenario we half the rate of discounts.
- There is significant uncertainty regarding future DTO volumes, which can be affected by a range of factors.
- Average youth custody running costs range from £120k to c.£270k per place per annum. If the additional caseload increases the population over safe operating limits, then we would also need to invest significant capital to increase capacity. However, if the additional caseload is small enough to be accommodated without incurring additional

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base

A. Background

Detention and Training Orders

1. The Detention and Training Order (DTO) was introduced by the Crime and Disorder Act 1998 as a custodial sentence for children. The DTO has been the most common custodial sentence for children over the past 10 years; in 2008/09, 89% of children sentenced to immediate custody received a DTO. The number of custodial sentences given to children has fallen dramatically since 2008/09, however DTO has remained the most common sentence, though its share has fallen slightly to 76% in 2018/19.
2. On average in 2018/19, 37% of the under-18 youth custody population was serving a DTO sentence. When the remand population is excluded, children serving DTO sentences account for 51% of the sentenced population.
3. A DTO can be given for a period of 4, 6, 8, 10, 12, 18 or 24 months. This is fixed in the Powers of Criminal Courts (Sentencing) Act 2000 and the DTO is the only youth sentence with fixed lengths. The aim of this restriction was to make the orders readily understandable to young people; to try to prevent inconsistencies in sentencing; to help in designing constructive regimes and sentence plans; and to have equitable early and late release arrangements. The intended consequences were that there would be consistency in sentencing whilst maintaining sufficient discretion for the courts.

Problem Under Consideration

4. Despite this restriction, we do not have any evidence that the judiciary need fixed lengths in statute to pass an appropriate sentence given that they have that freedom in every other instance.
5. The fixed lengths of DTOs can also impact the way in which time spent on remand or on bail is taken into account and on reductions made for a guilty plea. This is because there is not always a DTO length that directly fits once remand, bail or guilty pleas have been considered and the court must sentence to one of the fixed lengths.
6. For example, legislation requires that remand or qualifying bail should be taken into account when setting the DTO length. Sentencing guidelines explain that the standard approach is to double the time spent on remand/bail and then to subtract this from the nominal DTO term considered to be appropriate. If the result does not equate to one of the specified periods for a DTO, the court should adopt the nearest permissible period. This approach also means that time spent on remand is also discounted from the community part as well as the custodial part of the DTO. This is different to Section 250 sentences¹ and extended determinate sentences² where remand is 'credited' by being taken off the amount of custodial time to be served.
7. When taking into account a guilty plea, the appropriate sentence is decided first and then a reduction is made. The level of reduction depends on what stage the guilty plea was made (the maximum reduction is one third). This approach is the same for a DTO, Section 250 and Extended Determinate Sentences (EDS). However, for a DTO, if the reduction for a guilty plea results in a length that falls

¹ Section 250 sentences under the Sentencing Code were previously known as Section 91 sentences - Sentences for children (under 18 year olds) charged with grave crimes (these are certain offences listed in section 91 of the Powers of Criminal Courts (Sentencing) Act 2000). It is normally used to pass a sentence longer than the maximum two years available under a DTO.

² Young people can be sentenced to an extended custodial sentence if they are convicted of a specified offence as listed in schedule 15 of the Criminal Justice Act 2003 and the court believes that they are dangerous. The earliest possible release date is the two thirds point of the custodial period. Release will be on licence to the end of the extension licence period.

between two available periods, the court must impose the lesser of those two periods. This may result in a reduction greater than a third.

8. Fixed lengths can also create barriers to effective resettlement, for instance by preventing children from taking up college placements if released in October. Early release can create some flexibility but again this is limited.
9. Eligible offenders may be released early, before the half-way point of a DTO, a Section 250 sentence, a Detention at a Young Offenders Institution (DYOI) sentence and an adult standard determinate sentence (SDS). Early release is discretionary and is subject to an electronically monitored curfew at an approved address.
10. However, there is currently an inconsistency in the amount of early release an offender is eligible for when a DTO is served consecutively with another custodial sentence. If an offender is serving a DTO and is then given one of the other sentences, they can benefit from a total of 6½ months early release - up to 2 months from the DTO and up to 4½ months (on Home Detention Curfew) from the other sentence. If an offender is serving a Section 250, DYOI or adult SDS and is then given a consecutive DTO, they can only benefit from up to 2 months early release from the DTO.
11. The principle behind the provision was that the DTO is imposed for a specific length for the purposes of providing a specific programme and so cannot be reduced by virtue of it being consecutive or concurrent to a Section 250 detention. However, we know that those serving a DTO do not follow a specific programme whilst serving the custodial part of their sentence, they in fact have the same regime as those serving other sentences. With the removal of the fixed lengths of DTOs, this bill offers the opportunity to address this inconsistency.
12. This impact assessment (IA) therefore considers the effects of removing the fixed length element of DTOs (but retaining the 4-month minimum and 24-month maximum). This will allow a more accurate early guilty plea discount to be applied, time on remand to be subtracted from the time to serve in custody (consistent with other youth custodial sentences) instead of changing the sentence given, and, where consecutive sentences are being served, allow individuals to benefit from the total amount of early release regardless of sentence order.

B. Rationale and Policy Objectives

Rationale for Intervention

13. The conventional economic approach to government intervention is based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or there are failures with existing government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to groups in society in more need).
14. In this case, the primary rationale for the options assessed in this IA is equity; the proposed changes to DTOs aim to increase judicial flexibility, make DTOs simpler and fairer, and ensure children receive the most appropriate sentences. This will remove the possibility of getting early guilty plea discounts greater than the intended level due having to give a fixed length sentence. It will also mean that time spent on remand or bail is only deducted from the custodial part of the sentence, rather than both custody and community parts, and that, where consecutive sentences are given, children are eligible for the total amount of early release, consistent with other custodial sentences.

Policy Objectives

15. The associated policy objectives are not to affect the purpose or rehabilitative aims of the DTO. Instead, the options considered are intended to make the DTO a more flexible, simpler sentence and make it more consistent with other youth sentences.

C. Affected Stakeholder Groups, Organisations and Sectors

16. The following groups will be most affected by the options considered in this IA:

- Youth Offending Teams (YOTs) – manage under-18s on licence in England and Wales.
- Youth Custody Service (YCS) – operational responsibility for the children and young people's secure estate, which accommodates all children and young people aged 18 years and under held across England and Wales.
- Electronic Monitoring Service (EMS)
- The judiciary
- The Sentencing Council

D. Description of options considered

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

- **Option 0: Do Nothing:** Make no changes to DTOs
- **Option 1: Legislate to remove the fixed periods of DTO, amend remand and qualifying bail calculations and early release eligibility for consecutive sentences.**

18. Option 1 is the preferred option as it best meets the policy objectives.

Option 0

19. Under Option 0, DTOs sentences will continue to have the existing fixed lengths meaning only sentences of 4, 6, 8, 10, 12, 18, and 24 months could be given. As a result, the various problems identified above would remain.

Option 1

20. Option 1 will remove the fixed periods of DTOs, the minimum and maximum lengths will be retained meaning that under Option 1 a DTO of any length from 4- to 24-months can be given.

21. This will also allow time on remand to be subtracted from the time to serve in custody instead of changing the sentence given.

22. Amend legislation so that where a court imposes a DTO when the offender is already subject to a Section 250, DYOI or adult SDS, the offender can benefit from early release from both sentences in the same way they already benefit if the sentences are imposed the other way around.

23. It is assumed that these changes will come into effect in Autumn 2021. Changes will apply to all DTO sentences following implementation, no retrospective changes will be made.

E. Cost and Benefit Analysis

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

25. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales³ with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
26. The costs and benefits of each proposal are compared to option 0, the counterfactual or “do nothing” scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
27. The impacts in this IA have been assessed on the following basis:
- All estimates, unless stated otherwise, are annualised figures in 2020-21 prices. Costs have been rounded to nearest £0.1m.
 - A 20% optimism bias has been applied to all costs.
28. The NPV is presented for a 10-year period (2021-22 to 2030-2031), including optimism bias and a 3.5% discount rate with respect to time, with 2020-21 as the base year.

Level of analysis used (proportionality approach)

29. We have sought to provide a proportionate assessment of the impacts of the options discussed in this IA. Before presenting our analysis, we briefly describe below the main issues and uncertainties which have informed the extent and depth of the analyses presented in the rest of this IA.
30. In 2019 there were 980 DTO sentences. Under both Option 0 and Option 1, we have assumed that in future years the volume of sentences will change according to internal custodial population projections which take account of policy changes, including the recruitment of additional police officers. This IA presents only the impact as a result of the proposed DTO changes, however, this is dependent on future sentencing volumes (i.e. if DTO sentences increase then the impact of these changes will be greater). These future volumes are, however, uncertain and so any impacts from Option 1 may be higher or lower than estimated.
31. Under Option 1 any sentence length between 4 and 24 months could be given. It is difficult, however, to estimate how sentencing practice will change. For the purpose of this analysis we have assumed that under Option 1 sentences will be uniformly distributed between the midpoint of that fixed length and the one below, and the midpoint of that fixed length and the one above. For example, an individual who would get a 6-month DTO under the current rules is assumed to be equally as likely to get a 5-, 6- or 7-month DTO under Option 1. The impact of this assumption is explored in the sensitivity analysis (section F below).
32. This assumption means that in many instances there would be a negligible overall change as individuals are equally likely to get longer or shorter sentences. However, under Option 1, the restrictions on minimum (4-months) and maximum (24-months) DTO lengths will be retained meaning children receiving these sentences could only get longer or shorter sentences respectively.
33. Under sentencing guidelines, when an early guilty plea reduction results in a sentence between two fixed DTO lengths then the lesser sentence should be given. If the reduction takes the sentence below 4-months, then a community sentence should be given. Under Option 1 children will receive the exact guilty plea reduction as deemed appropriate by the sentencer (reductions below 4-months will still result in a community sentence). In some instances, this means that children will receive longer sentences than they currently do, for example, if an 8-month DTO is selected and a guilty plea

³ The policy change will only apply to England and Wales as justice matters for Scotland and Northern Ireland are devolved.

reduction of one-third is to be applied then this would reduce the sentence to 5.3 months. Under Option 1 it would be possible to accurately reflect the reduction, whereas under Option 0, a 4-month DTO would have to be given.

34. Of the small number of DTOs sentenced in Crown Court in 2019 (139 out of a total of 980 DTOs), 132 (95%) entered a guilty plea and we have assumed that a similar level of guilty pleas are observed in the youth court. However, there is limited data on the level of early guilty plea reduction applied and it is possible for zero discount to be given despite their being a guilty plea. In the high scenario we have assumed that all guilty pleas attract some level of early guilty plea reduction. Due to the uncertainty, we have modelled a lower scenario with half the rate of guilty plea reductions, the high scenario is considered the best estimate.
35. Under sentencing guidelines remand deductions are made before determining the DTO sentence. If, after the deduction, the sentence length is between two fixed points then the closest should be given. Therefore, we have assumed that the impact of removing fixed lengths will have a negligible impact on the time spent in custody after accounting for remand.
36. However, Option 1 will mean that time on remand is deducted from the time to serve in custody instead of being applied before setting the sentence length. This means that some people currently receive reductions in the community element of the DTO as a result of accounting for time on remand which will not happen under Option 1.

Option 1: Legislate to remove the fixed periods of DTO, amend remand and qualifying bail calculations, and early release eligibility for consecutive sentences.

Costs of Option 1

Monetised Costs

YCS

37. Under Option 1, there will not be any additional DTO sentences. However, we estimate that there will be an increase in the youth custody population, primarily driven by the fact that early guilty plea discounts will no longer be increased to give the lowest fixed length DTO.
38. At steady state, expected to be in 2024/25, we estimate that there will be an increase in the additional youth custody caseload of between 30 and 50 places (low and high scenarios), at a cost of between £5.3m and £8.5m per annum.
39. These costs are based on the average running costs per place for young offender institutes (YOIs), secure training centres (STCs), and Secure Children's Homes (SCHs). The cost of custody, per annum per place, can vary hugely (depending on the sector in which a child is accommodated) and costs can range from £120k to as much as c.£270k for the most complex children.
40. We have assumed that the increase in youth custody caseload will incur these average running costs, however, if the additional caseload increases the population over safe operating limits, then we would also need to invest significant capital to build additional capacity to meet the needs of increased numbers of children. Alternatively, if the additional caseload is small enough to be accommodated in the existing estate without incurring additional indirect costs, then the actual costs would be lower than these average running costs.

YOTs

41. Under Option 1, some individuals will receive longer sentences than at present and so spend longer serving the community element of the DTO than they currently do.
42. We estimate that, at steady state in 2024/25, this will lead to an increase in the number of children supervised in the community on DTOs at any one time of between around 30 to 50 (low and high scenarios), with YOT costs of around £0.4m to £0.6m per year.

43. There is significant uncertainty around community costs. Given the localised structure of YOTs, which may operate different models of delivery, costs may vary substantially between YOTs. These costs are based on National Audit Office (NAO) estimates of the cost of the community element of a DTO⁴ inflated to current prices, although the actual costs may still vary.
44. It should be noted that the estimated increase in the number of children supervised in the community at any one time is driven by some children spending longer under community supervision than they currently would, not by additional children starting community orders. If the additional caseload per YOT is small enough to be absorbed within existing YOT capacity, then costs may be smaller than estimated.

Non-Monetised Costs

YOTs

45. Under Option 1, some individuals will spend longer on the community element of their DTO due to the changes to how time on remand is accounted for. The size of impact will be driven by the number of children on remand or qualifying bail and the length of time spent on remand/bail. Not all children will spend longer on the community element under this option, only those who previously would have seen their DTO sentence length reduced as a result of taking into account time spent on remand. It has not been possible to quantify these costs.
46. Some individuals may also spend longer in the community as a result of being eligible for a greater amount of early release when serving consecutive sentences. However, internal analysis suggests that very few individuals are likely to meet the criteria to be impacted by this change (i.e. serving a DTO consecutively with a Section 250, DYOI, or SDS where the DTO sentence is being served last), therefore, we do not anticipate any significant overall impacts.

EMS

47. Under Option 1, some children may spend longer under the community element of the DTO than they currently do. Typically, when a child is serving the community element of their DTO they are not subject to electronic monitoring (except during the period of early release). However, it is possible for a case to be made for the child to be subject to electronic monitoring for the duration of the community portion of their sentence. We have not been able to quantify this, but since the costs will only be incurred by this subset of cases and Option 1 will only add an additional amount to the time served in the community, as opposed to additional community starts, we do not anticipate this being a large cost. These small costs are absorbable by the department's funding with no extra burden to the EMS providers.

The judiciary and Sentencing Council

48. Option 1 will change the available lengths of DTOs and how remand and early guilty plea reductions should be considered during sentencing. These changes will need to be reflected in the Sentencing Council guidelines and communicated to the judiciary who will have to familiarise themselves with the new approach. Given that we are making the changes to simplify DTOs and make them consistent with other custodial sentences given to children, we do not anticipate there being issues with the judiciary adapting to the new approach. These costs have not been quantified

Benefits of Option 1

Monetised Benefits

49. There are no monetised benefits of Option 1.

Non-Monetised Benefits

⁴ NAO, 2011, The youth justice system in England and Wales: Reducing offending by young people.

50. Under Option 1, some individuals serving consecutive sentences may be released earlier from the custodial portion of their sentence as a result of being eligible for a greater amount of early release (up to a maximum of 4.5 months extra). However, internal analysis suggests that very few individuals are likely to meet the criteria to be impacted by this change (i.e. serving a DTO consecutively with a Section 250, DYOI, or SDS where the DTO sentence is being served last). Therefore, we do not anticipate any significant overall impacts as a result of this change.

Judiciary

51. Removing the fixed lengths will give the judiciary the flexibility to give a sentence that means children will spend the appropriate amount of time in custody and in the community, rather than give a sentence of nearest available length.
52. Reductions for guilty pleas will be more accurate as the judiciary will no longer be restricted to giving the nearest, lowest available DTO length.
53. The time that a child has spent on remand or bail will also be more accurately reflected in the time spent in custody and the judiciary will be able to deduct the exact amount of time rather than being restricted to deducting time on remand from the sentence to be given and having to use one of the fixed lengths.

Reoffending

54. This may mean that some children will spend longer under community supervision than they currently do which could give YOTs more time to work with the children and provide benefits in terms of reoffending. However, there is a lack of evidence to support this and it has not been possible to quantify any potential reoffending benefit.

F. Risks, Assumptions and Sensitivity Analysis

Risks and Assumptions

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

Table 1: Assumptions and Risks

Assumptions	Risks / uncertainties
Modelling is based on published sentencing volumes observed in 2019 ⁵ and internal projections of future youth custody receptions. These projections are based on a number of assumptions and attempt to account for the impact of known policy changes (such as the recruitment of additional police officers). However, these assumptions are likely imperfect and could result in an over or under estimate of impacts	Changes to upstream factors such as crime, police resourcing, charges, sentencing and future policies will result in variation from projections. There is also uncertainty around how the courts will recover from COVID-19 so the population and offence mix may differ to what has been projected. Therefore, the actual impact may vary.
Modelling is based around assumptions of how the judiciary might respond to the change in DTO lengths (as described below)	This is inherently difficult to predict - whilst we have constructed a plausible scenario, other outcomes are possible.
Under Option 1 DTO sentences will be uniformly spread around the existing fixed points (between the midpoints with the lower and upper adjacent fixed points.	Actual sentences may not follow this distribution, as there may still be a tendency to give sentences around more meaningful units (e.g. in increments of quarter or half years), meaning the deviation

⁵ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

	from the fixed sentence lengths may be overestimate in this model.
Currently after applying an early guilty plea discount, if the sentence falls between fixed points then the lower of the fixed lengths is given. Under Option 1, the exact sentence length after applying the discount will be given.	This is consistent with the sentencing guidelines.
Currently when accounting for time spent on remand or qualifying bail (bail with either a curfew condition or electronic monitoring condition) the time is doubled then deducted from the proposed sentence. If the new sentence length falls between fixed lengths, then the closer is given. Under option 1, time spent on remand or qualifying bail will be deducted from the time to serve in custody (it will not impact the sentence given).	This is consistent with the sentencing guidelines.
We have assumed that around 90% of children plead guilty and receive some form of early guilty plea discount (either a 33%, 25%, or 10% reduction)	Data on the guilty plea rate in the Magistrates' Court is not publicly available. However, in the Crown Court, of the small number of DTOs sentenced in 2019 (139 out of a total of 980 DTOs), almost all (95%; 132) entered guilty pleas. Not all guilty pleas will necessarily result in a guilty plea reduction. If the guilty plea discount rate is lower than assumed, then the impacts will be lower than estimated. This has been explored in the sensitivity analysis.
The running costs of custody are assumed to be as follows: • Young Offender Institutions: Average cost per place, per year (including education) is £120,000. • Secure Training Centres: Average cost per place per year (including education) is £212,000. • Secure Children's Homes: Average cost per place per year (including education) is £273,000.⁶	The running cost of custody, per annum per child, can vary hugely (depending on their individual needs) and costs can range from 120k to as much as c.£270k for those most complex children. It is assumed that the additional caseload will incur these average running costs but not additional construction costs. However, if the additional caseload increases the population over safe operating limits, then we would also need to invest significant capital to build additional capacity to meet the needs of increased numbers of children. Alternatively, if the additional caseload is small enough to be accommodated in the existing estate without incurring additional indirect costs, then the actual costs would be lower than these average running costs.
All custodial costs will be incurred by Youth Custody Services.	If any individuals spend longer in custody as a result of these options and so transfer to the adult estate (or would already transfer to the adult estate) then some of the additional custody costs would be incurred by the adult prison estate.

⁶Freedom of Information Act (FOIA) Request – 200414006, May 2020

Assume a yearly cost to YOTs of supervising a child on the community element of a DTO at around £10k	These are based on the mid-point of the lower and upper DTO costs from a 2011 NAO report ⁷ , uplifted to current prices. There is significant uncertainty regarding community costs and so actual costs may be lower or higher than estimated and are likely to vary substantially between YOTs.
An optimism bias of 20% has been applied to all costs.	This standard practice to account for unforeseen costs or over-estimated benefits.

Sensitivity Analysis

56. There is significant uncertainty in the estimated impacts since they are dependent on how the judiciary respond to the DTO changes which is inherently difficult to predict. For example, the judiciary may continue to gravitate to the previous fixed lengths.
57. In order to explore this, we modelled scenarios with the same rate of early guilty plea reductions as in the main scenarios, but assuming that when initially selecting a sentence (before applying the reduction) the judiciary continue to use the existing fixed points.
58. Under the high guilty plea reduction scenario, this would lead to similar impacts as the high scenario in the main analysis above; there is estimated to be an increase in the youth custody population of around 50 places.
59. Under the low guilty plea reduction scenario, this would lead to a small decrease in the estimated impacts compared to the low scenario in the main analysis above (an increase in the youth custody population of around 25 places at an annual YCS cost of around £4.4m per year compared to 30 places and a cost of around £5.3m).

G. Impact on small and micro businesses

60. There are not assumed to be any direct costs or benefits to business from Option 1.

H. Wider Impacts

Equalities

61. We hold the view these measures are not directly discriminatory within the meaning of the Equality Act 2010. A separate equalities impact assessment related to these and other measures in the PPPCS bill has been published alongside this IA.
62. We know that there is overrepresentation of certain people in the youth justice system with protected characteristics. Males are overrepresented relative to females, Black, Asian and Minority Ethnic (BAME) groups are overrepresented relative to their distribution in the general population, and youth offender cohorts tend toward the upper end of the age range covered by the youth justice system.
63. We believe that the changes to the DTO are not directly discriminatory to any of these groups.
64. We believe that more individuals in the above groups may be affected by the DTO changes due to their over-representation in the youth justice system. Although no additional children would be sentenced to a DTO, the removal of the fixed lengths means that DTOs could increase or decrease because the judiciary will not be restricted by the fixed lengths. However, this change, will make it a simpler, more flexible sentence and will ensure that it is applied fairly.

⁷ NAO, 2011, The youth justice system in England and Wales: Reducing offending by young people.

I. Direct costs and benefits to business calculations

65. There are not assumed to be any direct costs or benefits to business for Option 1.

Better Regulation

66. These proposals are exempt under the Small Business Enterprise and Employment Act 2015 and will not count towards the department's business impact target.

J. Potential trade implications of measure

67. There are not assumed to be no impacts on international trade from the options assessed.

K. Monitoring and Evaluation

68. The impact of the changes will be monitored by MoJ and YCS.