

<b>Title: Simplification of Criminal Law: Kidnapping and Related Offences</b>  <b>IA No:</b> LAWCOM0040  <b>Lead department or agency:</b> Law Commission  <b>Other departments or agencies:</b> Ministry of Justice	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 9 February 2015		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> kidnapping@lawcommission.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> RPC Opinion Status

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 Two-Out?
NQ	NQ	£m	No   NA

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

The offences of kidnapping, false imprisonment and child abduction all criminalise conduct that may result in a person being “missing”. The law in relation to the offences of kidnapping and false imprisonment is uncertain and provides no clear distinction between the two. This causes problems at various stages in the criminal justice process from the decision to charge to the consideration of sentence. There are two significant shortcomings with the current child abduction offences. First, the maximum sentence is inadequate in the most serious cases. Secondly, whilst it is an offence to take a child abroad without parental consent it is not an offence for a parent to keep a child abroad beyond the period for which permission was given. Government intervention is necessary as primary legislation is the only way to rectify these problems.

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

- (1) To ensure the law in this area is readily comprehensible;
- (2) To ensure that these offences and the applicable sentences reflect the harm caused and the culpability of the defendant; and
- (3) To ensure the criminal justice system operates as efficiently as possible.

The intended effect is to increase public confidence in the criminal justice system.

**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: (a) Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention; and  
(b) Extend the sentencing powers for offences of child abduction from 7 to 14 years’ imprisonment and criminalise a parent’s wrongful retention of a child abroad.

Option 2: Replace the common law offences of kidnapping and false imprisonment by creating statutory offences kidnapping and unlawful detention.

Option 3: Extend the sentencing powers for offences of child abduction from 7 to 14 years’ imprisonment and criminalise a parent’s wrongful retention of a child abroad.

**Our preferred option is Option 1 because this addresses all the problems identified in relation to these offences and meets the identified policy objectives of the recommendations.**

<b>Will the policy be reviewed? It will not be reviewed. If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes/No	<b>&lt; 20</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>	
				<b>Non-traded:</b>	

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

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description: 1(a)** Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention.

**1(b)** Extend the sentencing powers for offences of child abduction from 7 to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad.

## FULL ECONOMIC ASSESSMENT

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

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

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

Transitional costs: Training and familiarisation costs are expected to be negligible [legal practitioner, enforcement bodies]; a small spike in appeals for Child Abduction offences [HMCTS].

Ongoing possible costs: We expect a small increase in prosecutions from the criminalisation of conduct following the extension of the Child Abduction Act 1984. Our best estimate of the cost per defendant is £23,000. The increased maximum sentence from 7 to 14 years' imprisonment is expected to lead to the increased cost of an offender – section 1 - £9,200 to NOMS and Section 2 -£6,400 to NOMS. We also expect an increase in outgoing extradition requests. It has not been possible to monetise these costs because of reasons expressed in detail in the evidence base below.

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

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

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

No transitional benefits identified.

We identify the following ongoing benefits, although it has not been possible to monetise the savings: reduced court time required in prosecutions of kidnapping and unlawful detention [HMCTS]; reduction in appeals against convictions for kidnapping and unlawful detention [HMCTS]; in extending section 1 of the Child Abduction Act 1984 we expect a reduction in Hague Convention proceedings.

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

Criminalising a parent's wrongful retention of a child abroad may have a deterrent effect on such conduct. We note that the evidence on deterrence is mixed. A reduction in occurrences of child abduction would mean that fewer families will have to face the associated emotional distress and will also avoid the financial cost of seeking the return of their children at their own expense. It has not been possible to monetise this.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	n/a
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See Annex A

## BUSINESS ASSESSMENT (Option 1)

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

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention.

## FULL ECONOMIC ASSESSMENT

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

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

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

Transitional costs: Training and familiarisation costs are expected to be negligible [legal practitioner, enforcement bodies]; a small spike in appeals for Child Abduction offences [HMCTS].

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

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

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

No transitional benefits identified.

We identify the following ongoing benefits, although it has not been possible to monetise the savings: reduced court time required in prosecutions of kidnapping and unlawful detention [HMCTS]; reduction in appeals against convictions for kidnapping and unlawful detention [HMCTS].

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

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>
See Annex A.	

## BUSINESS ASSESSMENT (Option 2)

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

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Extend the sentencing powers for offences of child abduction from 7 to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad.

## FULL ECONOMIC ASSESSMENT

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

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

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

Transitional costs: Training and familiarisation costs are expected to be negligible [legal practitioner, enforcement bodies]; a small spike in appeals for Child Abduction offences [HMCTS].

Ongoing possible costs: We expect a small increase in prosecutions from the criminalisation of conduct following the extension of the Child Abduction Act 1984. Our best estimate of the cost per defendant is £23,000. The increased maximum sentence from 7 to 14 years' imprisonment is expected to lead to the increased cost of an offender – section 1 - £9,200 to NOMS and Section 2 -£6,400 to NOMS. We also expect an increase in outgoing extradition requests. It has not been possible to monetise these costs because of reasons expressed in detail in the evidence base below.

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

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

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

No transitional benefits identified.

We identify the following ongoing benefits, although it has not been possible to monetise the savings: in extending section 1 of the Child Abduction Act 1984 we expect a reduction in Hague Convention proceedings.

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

Criminalising a parent's wrongful retention of a child abroad may have a deterrent effect on such conduct. We note that the evidence on deterrence is mixed. A reduction in occurrences of child abduction would mean that fewer families will have to face the associated emotional distress and will also avoid the financial cost of seeking the return of their children at their own expense. It has not been possible to monetise this.

### Key assumptions/sensitivities/risks

See Annex A.

### Discount rate (%)

## BUSINESS ASSESSMENT (Option 3)

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

# Evidence Base

## Introduction

In its Tenth Programme of Law Reform,<sup>1</sup> which began in June 2008, the Law Commission embarked on a programme of simplification of the criminal law. The kidnapping project is part of the simplification agenda and concerns the following related criminal offences which operate when a person is missing:

- (1) kidnapping (common law);
- (2) false imprisonment (common law); and
- (3) child abduction (statutory – sections 1 and 2 of the Child Abduction Act 1984).

In 2011 the Law Commission published Consultation Paper No 200, *Simplification of Criminal Law: Kidnapping*.<sup>2</sup> The Consultation Paper provisionally proposed the replacement of the common law offences of kidnapping and false imprisonment in statute.

In July 2013 the project was extended to include offences of child abduction under sections 1 and 2 of the Child Abduction Act 1984 to address problems identified in case law.

Once the consultation responses had been collated and analysed, the Law Commission published Report No 355 *Simplification of Criminal Law: Kidnapping and Related Offences* (“the Report”) on 20 November 2014.<sup>3</sup>

## Problems under consideration

The problems will be considered in relation to the separate offences:

- (1) kidnapping and false imprisonment; and
- (2) child abduction.

### Kidnapping and false imprisonment

Kidnapping and false imprisonment are currently both common law offences. They have been developed by the courts over centuries. Common law is law made through decisions of the courts rather than the application and interpretation of statutes enacted by Parliament. Although common law has the benefit of flexibility it can result in a lack of -

- (1) certainty;
- (2) accessibility;
- (3) comprehensibility; and
- (4) consistency of application.

Common law offences can develop and evolve in a haphazard way because the court is restricted to dealing with the particular case before it so cannot engage in systematic overhaul of the law. At the same time, problems can arise because the courts have no statutory framework to operate within when applying and interpreting the offences and that can lead to overbroad and unwieldy offences.

Creating statutory offences permits more coherent and structured development of law which is more intelligible and accessible by ensuring it is properly and rationally organised and expressed in clear and modern language.

### *Kidnapping*

Kidnapping emerged as a distinct offence in the 1680s.<sup>4</sup> The common law offence of kidnapping is problematic because the ingredients of the offence are unclear and overlapping. For example, the

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<sup>1</sup> <http://lawcommission.justice.gov.uk/publications/programmes-law-reform.htm>.

<sup>2</sup> <http://lawcommission.justice.gov.uk/areas/kidnapping.htm>.

<sup>3</sup> <http://lawcommission.justice.gov.uk/publications/kidnapping.htm>.

<sup>4</sup> *Dassingney* (1683) Raym 474, 83 ER 247 and 2 Show 221, 89 ER 902.

requirements of both force or fraud and lack of consent overlap and neither element is currently defined clearly. The offence has no clear underlying rationale and no clear distinction from the closely related offence of false imprisonment. Accordingly, it fails to operate effectively and efficiently.

### *False imprisonment*

The common law offence of false imprisonment is not sufficiently distinct from the offence of kidnapping. Further, the name 'false imprisonment' is not readily understandable and is misleading. The Council of HM Circuit Judges, in response to the Law Commission's public consultation exercise, stated that this results in the necessity to provide an explanation in order to dispel common misconceptions.

### **Child abduction**

There are two distinct and serious problems with the current offences of child abduction, under sections 1 (abduction by parents or connected persons) and 2 (abduction by other persons) of the Child Abduction Act 1984. These problems result in the criminal law being inadequate in its approach to the serious and devastating conduct involved.

- (1) It is not currently an offence for a parent (or connected person) to take a child abroad with appropriate consent but fail to return them in contravention of that consent – a clear gap in the law. This problem was identified by the High Court in *R (Nicolaou) v Redbridge Magistrates' Court*.<sup>5</sup> The phenomenon of international child abduction by parents has become significantly more widespread over the past half-century.<sup>6</sup>
- (2) The maximum sentence for child abduction offences is 7 years' imprisonment. This is inadequate in the gravest cases of child abduction and is inconsistent with the related offence of kidnapping which carries a maximum sentence of life imprisonment. This problem was identified by the Lord Chief Justice in *R v Kayani*.<sup>7</sup>

## **Policy objectives**

- **To ensure the law in this area is readily comprehensible.** .
- **To ensure that these offences reflect the harm caused and the culpability of the defendant.** The proposed reforms ensure that the criminal offences in question are accurate, specific and respond appropriately to the specific conduct and consequences that they are designed to address.
- **To ensure the criminal justice system operates as efficiently as possible.** Clarification of criminal offences will ensure that the criminal justice system operates more efficiently from the point of charge through to sentence. Offences that are confusing and regularly misunderstood at present result in time being wasted for example in unnecessary legal argument, sentencing and appeals.

The intended effect is to improve efficiency and increase public confidence in the criminal justice system. Further, systems need to be in place to ensure people committing unlawful acts can be returned to face justice. The extension of the offence of child abduction will better enable the authorities to tackle cross-border child abduction effectively.

## **Rationale for intervention**

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are failures in existing

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<sup>5</sup> [2012] EWHC 1647 (Admin), [2012] 2 Cr App R 23.

<sup>6</sup> Rhona Shuz *The Hague Child Abduction Convention: A Critical Analysis* (2013), p1.

<sup>7</sup> [2012] EWCA Crim 2871, [2012] 1 WLR 1927.

government interventions (e.g. waste generated by misdirected rules). In both cases the proposed intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

In the case of kidnapping and false imprisonment current arrangements generate wasteful resources at several levels. Uncertainty in the law leads to lengthier legal argument and fosters unnecessary appeals and ineffectual prosecutions. Further, the gap in the offences of child abduction can lead to serious injustice to abducted children and their families.

Statutory intervention is required because it is the only way to make the necessary changes to the offences under consideration. This would allow for a comprehensive and logically satisfactory solution to the problems and uncertainties with the current offences. The Lord Chief Justice stated in *Kayani*<sup>8</sup> that these issues cannot be resolved by the courts. Further, in relation to kidnapping and false imprisonment, it is desirable in principle for common law offences to be restated in statute, even if they are found to be unproblematic. It is all the more desirable if there are problems and ambiguities, as restating the offences gives the opportunity to put them right.

## Scale and context<sup>9</sup>

One person is recorded missing every two minutes.<sup>10</sup> The criminal offences of kidnapping, false imprisonment and child abduction are vital in bringing to justice those responsible where a person is missing as a result of the wrongful conduct of another. It is imperative that these offences operate coherently and appropriately.

## Kidnapping and false imprisonment

The scale and context of the offences of kidnapping and false imprisonment will be dealt with in the following order:

- (1) prosecution and conviction;
- (2) sentence; and
- (3) appeals.

### ***Prosecution and conviction***

Both kidnapping and false imprisonment are currently indictable-only offences, meaning that they can only be tried in the Crown Court. A person accused of either or both of these offences is brought before a magistrates' court which immediately sends the case to the Crown Court.<sup>11</sup>

Table 1 below shows the number of prosecutions and convictions for kidnapping and false imprisonment in the period 2009 to 2013. The number of prosecutions which reached a first hearing at the magistrates' court each year ranged between:

- (1) 426 to 548 defendants proceeded against for kidnapping; and
- (2) 429 to 683 defendants proceeded against for false imprisonment.

This relatively high number, when compared with the number of convictions (see Table 1), could provide evidence that the offences are currently easily misunderstood and not clearly distinct and are charged in cases which are later deemed to be inappropriate or unnecessary. However, we cannot account for those defendants who were proceeded against on a charge of kidnapping or false imprisonment but were later convicted of a lesser offence.

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<sup>8</sup> [2011] EWCA Crim 2871.

<sup>9</sup> Note, in the 'scale and context' and 'costs and benefits' we rely in part on data supplied by *reunite international child abduction centre* (*reunite international*). *Reunite international* is a leading UK charity specialising in the movement of children across international borders and have assisted the Law Commission on their research into child abduction offences. As a result of their exposure to many cases of international child abduction the data collected by *reunite international* is well informed.

<sup>10</sup> <http://www.missingpersons.police.uk/en/resources/missing-persons-data-analysis-2012-13>.

<sup>11</sup> Crime and Disorder Act 1998, s 51.

According to Table 1, between 2009 and 2013 there were, on average each year –

- (1) 141 convictions for kidnapping; and
- (2) 212 for false imprisonment.

**Table 1 – Defendants proceeded against at magistrates courts and found guilty at all courts for kidnapping and false imprisonment and all indictable offences, England and Wales, 2009 to 2013**

	2009	2010	2011	2012	2013	Average
<b>Kidnapping</b>						
Proceeded against	543	548	498	426	429	489
Found guilty	194	151	133	126	99	141
<b>False imprisonment</b>						
Proceeded against	683	677	590	503	429	576
Found guilty	231	219	224	208	180	212
<b>All indictable offences</b>						
Proceeded against	418,910	438,540	416,911	362,975	361,792	399,826
Found guilty	331,170	353,317	339,795	298,080	289,878	322,448

Notes for kidnapping and false imprisonment:

1. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
2. The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.
3. The number of convictions does not include convictions for lesser offences following an initial prosecution for kidnapping or false imprisonment.

Source: Justice Statistics Analytical Services - Ministry of Justice.

Notes for all indictable offences:

Source: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/346639/criminal-justice-statistics-april-2013-to-march-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346639/criminal-justice-statistics-april-2013-to-march-2014.pdf)

## Sentence

Table 3 below shows the sentences passed for convictions of kidnapping and false imprisonment over the period of 2009 to 2013.

**Table 2 – Defendants proceeded against at magistrates courts and sentenced at all courts for kidnapping and false imprisonment, England and Wales, 2009 to 2013**

	2009	2010	2011	2012	2013	Average
<b>Kidnapping</b>						
Immediate custody	151	137	119	116	86	122
Average custodial sentence length [months]	50.5	57.6	52.6	45.8	47.3	50.76
<b>False imprisonment</b>						
Immediate custody	159	167	174	142	149	158
Average custodial sentence length [months]	35.1	38.3	45.5	33.1	38.5	38.1

Note:

1. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
2. The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.
3. Excludes life and indeterminate sentences.
4. The number of convictions does not include convictions for lesser offences following an initial prosecution for kidnapping and false imprisonment.

Source: Justice Statistics Analytical Services - Ministry of Justice.

According to the Ministry of Justice, the average length of custodial sentences for kidnapping is 33% longer than for false imprisonment, see Table 2 above. This supports the view of the Law Commission following consultation that kidnapping is a generally more serious offence than false imprisonment.

## **Appeal**

Table 3 below shows that kidnapping convictions are appealed in a disproportionate number of cases when compared with false imprisonment and other indictable offences. For instance, on average twice as many appeals against conviction for kidnapping were heard than for false imprisonment in 2010-11.

(1) Both offences:

- a. 22 applications per year (5.5% of convictions)
- b. 4.5 appeals heard per year (1% of convictions)

(2) Kidnapping:

- a. 15 applications per year (10% of convictions)
- b. 3.5 appeals heard per year (2.2% of convictions)

(3) False Imprisonment:

- a. 6.75 applications per year (2.9% of convictions)
- b. 1 appeal heard per year (0.4% of convictions)

Taking the estimates for number of convictions for all indictable offences following contested trials (see Table 1 above) and comparing them with the number of applications for leave to appeal to the Court of Appeal from the Crown Court generally (see Table 3 below) we can see that on average, across all trials in the Crown Court, such applications for appeal are made in only around **1.6%** of cases and heard in only around **0.5%** of cases. The average appeal rates across all Crown Court cases are considerably lower than the figures for kidnapping, which tends to support the suggestion that the current kidnapping offence is uncertain and problematic, which creates inefficiencies under the present law.

**Table 3: Applications for appeal against conviction (kidnapping & false imprisonment) vs. all trials**

		Kidnapping	False Imprisonment	Both Offences	All trials
2010 - 2011	App for leave	22	6	28	1,491
	Heard	6	3	9	535
	Allowed	3	3	6	213
2011 - 2012	App for leave	9	11	20	1731
	Heard	1	0	1	377
	Allowed	1	0	1	146
2012 - 2013	App for leave	17	5	22	1558
	Heard	2	0	2	358
	Allowed	0	0	0	122
2013 - 2014	App for leave	13	5	18	n/a
	Heard	5	1	6	n/a
	Allowed	0	0	0	n/a

Notes:

1. Where the main offence is either false imprisonment or kidnapping. Please note that we only record one offence, which would generally be the offence which received the longest sentence. Also, the appeals heard during the period may not be the same cases received given the lead time on dealing with conviction appeals.
2. Data for appeals in all cases found at <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/coa-criminal-division-annual-report-2012-13.pdf>.

Source: Her Majesty's Courts Service

## Child abduction

### Current occurrences

The police are most often the first agency to take the report that a child or adult has gone missing.<sup>12</sup> Accordingly, under the current law (where wrongful retention by a parent is not an offence) it is reasonable to presume that the left-behind parent is likely to report the incident to their local police force. The police will then undertake the necessary inquiries to establish whether an offence has been committed.

Data obtained on consultation<sup>13</sup> indicates that there are around 200 wrongful retentions of children based in England and Wales per year which make up over 40% of total child abductions (understood in Hague Convention terms, as including acts of initial consensual taking followed by wrongful retention). According to this data there were 220 wrongful retentions in 2013 which would suggest that there were around 550 occurrences of child abduction in 2013 in total. On average, around 19% of children are returned voluntarily following international abduction.<sup>14</sup>

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117793/missing-persons-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117793/missing-persons-strategy.pdf).

<sup>13</sup> Which is consistent with the following statistical survey in 2008 - <http://www.hcch.net/upload/wop/abduct2011pd08ae.pdf>.

<sup>14</sup> Rhona Shuz *The Hague Child Abduction Convention: A Critical Analysis* (2013), p37.

The 220 wrongful retentions in 2013 involved 305 children, 145 of which were in a jurisdiction which is a member of the Hague Convention, while 75 were to non-Hague Convention jurisdictions.<sup>15</sup>

The initial Orders that must be sought in Hague Convention proceedings are a wardship order, a return order and an Article 15 decision. These cost around £10,000.<sup>16</sup>

The civil procedures can result in significant cost to the left-behind parent. According to anecdotal figures supplied to us on consultation by *reunite international*, the cost to a litigant of civil proceedings under the Hague Convention could be as much as £25,000 for a child to be returned from a Hague Convention country and £250,000 from non-Hague countries. This does not include the cost of court fees and other administrative costs to the public purse.

If wrongful retention of a child by a parent is criminalised, in line with the Law Commission's recommendations, then it is possible that some cases will be resolved through the issuing of an extradition request, without need for the left-behind parent to conduct expensive international civil proceedings (whether privately or publicly funded).

### **Extradition**

Our recommendation may result in a small increase in extraditions into the UK since parents who have retained their child abroad will need to be brought to England and Wales to face trial. In such cases the UK would bear the cost of issuing a warrant, preparing an extradition request and, assuming the extradition is granted, transporting the parent back to the UK for trial. Accordingly the cost will not be high and we do not foresee a significant number of such extraditions. Unfortunately, there is no data available to accurately analyse the scope of this.

### **Prosecution and Trial**

There are two offences of child abduction under the Child Abduction Act 1984. Section 1 applies to parents or connected persons. Section 2 applies to others. Both offences are currently triable either-way<sup>17</sup> and carry a maximum sentence of 7 years' imprisonment.

See Table 4 below showing the number of defendants proceeded against in 2009 – 2013.

**Table 4: Defendants proceeded against at magistrates courts and found guilty at all courts for Child abduction offences, England and Wales, 2009 to 2013**

	2009	2010	2011	2012	2013	Average
<b>Abduction by a parent</b>						
Proceeded against	8	12	16	19	22	15
Found guilty	5	9	11	7	10	8
<b>Abduction by others</b>						
Proceeded against	116	101	138	122	122	120
Found guilty	50	72	76	86	66	70

Note:

1. The figures given in the table relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.
2. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
3. The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.
4. The number of convictions does not include convictions for lesser offences following an initial prosecution for child abduction.

Source: Justice Statistics Analytical Services - Ministry of Justice.

<sup>15</sup> Data supplied by *reunite international*.

<sup>16</sup> Data from *reunite international*.

<sup>17</sup> They can be tried in the magistrates' court or the Crown Court.

## Sentence

Table 5 shows the number of custodial sentences and the average custodial sentence length for the period 2009 to 2013.

**Table 5 – Defendants proceeded against at magistrates courts and sentenced at all courts for Child Abduction Offences, England and Wales, 2009 to 2013**

	2009	2010	2011	2012	2013	Average
<b>Abduction by a parent</b>						
Immediate custody	2	3	7	5	8	5.0
Average custodial sentence length [months]	11.5	22.0	24.7	26.4	20.8	21.08
<b>Abduction by others</b>						
Immediate custody	14	39	28	40	31	30
Average custodial sentence length [months]	24.3	22.0	17.3	16.3	19.9	19.96

Notes:

1. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
2. The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.
3. Excludes life and indeterminate sentences.
4. The number of convictions does not include convictions for lesser offences following an initial prosecution for child abduction.

Source: Justice Statistics Analytical Services - Ministry of Justice

## Disparity

It will be observed that there is substantial disparity between the data suggested to us on consultation regarding the number of instances of child abduction each year (eg 550 in 2013, see page 10 above) and the relatively low number of convictions and sentences for child abduction offences.

One reason for this may be that a different definition of ‘child abduction’ was used to collect this data compared with the tighter definition of the offences. In addition, even cases where the offence is made out, it may not lead to prosecution or conviction, possibly due to issues such as non-reporting, the return of some abducted children voluntarily, absence of evidence etc.

Further, it is possible that some of these cases are currently charged with kidnapping. The Lord Chief Justice emphasised that kidnapping should be charged by prosecutors in appropriate cases of child abduction (which is reflected in current CPS guidance).<sup>18</sup>

## Proxy offences

The Ministry of Justice has advised that in order to analyse the impact of the new offence of a parent’s retention of a child abroad, a proxy offence should be identified.

We use two proxy offences, ‘abduction of child by parent’, and ‘burglary in a dwelling with intent to commit an offence’ to provide the estimate range. The low estimate is indicated with reference to the ‘abduction of child by parent’ and the high estimate is indicated with reference to a ‘burglary in a dwelling with intent to commit an offence’. The mid-point between the two is the best estimate.

The offence of domestic burglary has been used as a proxy since it carries the same maximum sentence – 14 years’ imprisonment. However, child abduction is a very different sort of offence, which is committed with far less frequency. It may be more likely to be a one-off offence committed by people of previous good character, perhaps in reaction to a particular domestic situation. Evidence shows that burglary is more likely to be committed by a repeat offender.<sup>19</sup>

<sup>18</sup> *Kayani* [2011] EWCA Crim 2871.

<sup>19</sup> See *Brewster* [1998] 1 Cr App R (S) 181 as endorsed in *Saw* [2009] 2 Cr App R (S) 367 at [24].

**Table 6** – Defendants proceeded against at magistrates courts and found guilty and sentenced at all courts for burglary in a dwelling, England and Wales, 2009 to 2013

	2009	2010	2011	2012	2013	Average
<b>Burglary (domestic)<sup>20</sup></b>						
Proceeded against	17,706	18,649	18,526	16,755	15,055	17,338
Found guilty	13,081	13,965	14,229	12,772	11,409	13,091
Immediate custody	6,874	7,277	8,004	7,415	7,037	7,321
Average custodial sentence length [months]	21.4	21.4	21.7	22.2	23.6	22.06

Notes:

1. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
2. The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.
3. Excludes life and indeterminate sentences.
4. The number of convictions does not include convictions for lesser offences following an initial prosecution for burglary.

Source: Justice Statistics Analytical Services - Ministry of Justice.

## Key Stakeholders

The key stakeholders that will be affected by these reforms are:

- (1) Law enforcement agencies – the police and the National Crime Agency
- (2) Crown Prosecution Service
- (3) Legal practitioners
- (4) HM Courts and Tribunals Service
- (5) NOMS

## Public Consultation exercise

Consultation on this project took place in three key stages:

- (1) **Formal public consultation:** The initial formal consultation period closed on 27 December 2011 but some late responses were accepted. We initially received 14 responses to this element of the consultation process which included collective responses from professional bodies representing thousands of stakeholders:
  - a. *Legal practitioners:* Council of HM Circuit Judges, Criminal Bar Association, Anthony Edwards, Justices' Clerks Society, the senior judiciary (response drafted by Lord Chief Justice Thomas, when he was President of the Queen's Bench Division, and Lord Hughes, when he was Vice President of the Court of Appeal Criminal Division), London Criminal Courts Solicitors Association, Samantha Riggs, Jonathan Rogers;
  - b. *Academics:* Jeremy Horder, Rebecca Williams;
  - c. *Officials:* Crown Prosecution Service, Dean Henson (Detective Superintendent, West Yorkshire Police), UK Missing Persons Bureau;
  - d. *Charities:* Missing People.

The responses broadly supported our proposals to replace the offences of kidnapping and false imprisonment in statute. The majority of consultees showed preference for maintaining two separate offences.

<sup>20</sup>

Rather than commercial.

- (2) **Consultation as a result of extended terms:** Subsequent to the terms of the project being extended to include the problems identified in *Nicolaou* [2012] EWHC 1647 (Admin) and *Kayani* [2011] EWCA Crim 2871, the Law Commission consulted with experts in this area. Responses on these matters supported the extension of the section 1 offence and the sentencing powers in relation to both section 1 and 2.
- (3) **Informal consultation pre-publication:** in the immediate period before publication we undertook further informal consultation, including a roundtable discussion at the University of Cambridge. This period of consultation included expert academics, officials, charities and practitioners.

## Description of options considered

Our options are:

Option 0: Do nothing.

Option 1:

(a) Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention; and

(b) Extend the sentencing powers for offences of child abduction to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad.

Option 2: Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention.

Option 3: Extend the sentencing powers for offences of child abduction to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad.

### Option 0: Do nothing [base case]

Retain the existing law relating to kidnapping, false imprisonment and child abduction. The key features and associated problems of the current law are summarised below.

**Table 7:** current law and associated problems

Current law	Key features and associated problems
<p>Kidnapping is defined by the House of Lords in the following terms:</p> <p>First, the nature of the offence is an attack on and infringement of the personal liberty of an individual.</p> <p>Secondly, the offence contains four ingredients as follows: (1) the taking or carrying away of one person by another; (2) by force or fraud; (3) without the consent of the person so taken and carried away; and (4) without lawful excuse.<sup>21</sup></p>	<p>The current definition of kidnapping fails to provide certainty as to:</p> <ol style="list-style-type: none"> <li>(1) the role of deprivation of liberty in the offence, and in particular at what time it needs to occur;</li> <li>(2) the meaning of "taking or carrying away";</li> <li>(3) the relationship between the requirements of force or fraud and lack of consent;</li> <li>(4) the role of consent in the offence and in particular to what the lack of consent must relate: is it consent to being taken away, consent to deprivation of liberty or both?</li> <li>(5) the meaning of lawful excuse;</li> <li>(6) the mental element of the offence (intention or recklessness).</li> </ol>

<sup>21</sup>

*D* [1984] AC 778.

<p>The common law offence of false imprisonment was defined by the Court of Appeal in the following terms:</p> <p>The unlawful and intentional or reckless restraint of a victim's freedom of movement from a particular place.<sup>22</sup></p>	<p>The current offence of false imprisonment is problematic because:</p> <ol style="list-style-type: none"> <li>(1) 'False imprisonment' is unintelligible as a name for the offence. On consultation the judiciary confirmed that the name requires explanation to those unfamiliar with the offence.</li> <li>(2) The distinction between false imprisonment and kidnapping is unclear.</li> </ol>
<p>Sentencing powers:</p> <p>The maximum sentence for kidnapping and false imprisonment is life imprisonment.</p> <p>The maximum sentence for child abduction under sections 1 and 2 of the Child Abduction Act 1984 is 7 years' imprisonment.</p>	<p>The sentencing powers require reform because:</p> <ol style="list-style-type: none"> <li>(1) the most serious child abduction cases are as serious as an offence of kidnapping and, as stated by the Lord Chief Justice, are offences of "unspeakable cruelty",<sup>23</sup> and</li> <li>(2) kidnapping cannot always be charged because of the requirements of both force or fraud and a lack of consent. Therefore, "this wide discrepancy seems illogical".<sup>24</sup></li> </ol>
<p>There are two child abduction offences under the Child Abduction Act 1984 (CAA 1984).</p> <p>First, section 1, child abduction by parents (or connected persons), committed by <i>taking or sending</i> a child out of the UK without the appropriate consent.</p> <p>Second, section 2, child abduction by other persons, by <i>taking or detaining</i> a child from persons with lawful control of the child.</p>	<p>Child abduction under section 1 does not apply where a parent takes a child outside the UK with appropriate consent but retains the child beyond the period for which permission was given.</p> <p>This is a clear gap in the law that must be filled in order to provide adequate protection and justice for children and their families.</p>

#### Option 1:

- (a) Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention; and
- (b) Extend the sentencing powers for offences of child abduction to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad.

#### 1(a) Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention

##### **Create a statutory offence of kidnapping**

Creating a statutory offence of kidnapping provides the only opportunity to produce a wholesale reform of the offence. Accordingly, this is the only way to address the problems identified in the current law.

In summary, the statutory offence of kidnapping would be committed when a defendant:

- (1) without lawful authority or reasonable excuse,
- (2) intentionally uses force or threats of force,
- (3) in order to take a victim or otherwise cause a victim to move with him.

This new definition removes the requirement for there to be both force or fraud and a lack of consent and will therefore make the offence easier to charge, prosecute, defend and sentence in an accurate and appropriate way. Further, by placing the use or threat of force at the core of the offence it make the distinction between kidnapping and the recommended statutory offence of unlawful detention clear and intelligible.

<sup>22</sup> *Rahman* (1985) 81 Cr App R 349

<sup>23</sup> *Kayani* [2011] EWCA Crim 2871.

<sup>24</sup> *Kayani* [2011] EWCA Crim 2871.

Further, we recommend that the current requirement under section 5 of the Child Abduction Act 1984 for the DPP's consent to prosecution, for kidnapping by parents, should continue, taking account of the observations of the Court of Appeal in *Kayani*.<sup>25</sup> The new statutory offence should not include lack of consent, deprivation of liberty or restriction on freedom of movement as express ingredients.

### ***Create a statutory offence of unlawful detention***

In summary, the statutory offence of unlawful detention would be committed when the defendant:

- (1) without lawful authority or reasonable excuse,
- (2) intentionally or recklessly,
- (3) causes the restriction of the victim's freedom of movement from a particular place.

The ingredients of the offence of unlawful detention should remain largely as they are understood under the current common law offence of false imprisonment. Renaming the offence unlawful detention will better describe it. Unlawful detention is logical and a more accurate representation of the conduct to which the offence applies.

### **1(b) Extend the sentencing powers for offences of child abduction from 7 to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad.**

#### ***Increase the maximum sentence under for offences of child abduction***

The maximum sentence for the offences under sections 1 and 2 of the Child Abduction Act 1984 should be increased from 7 years' to 14 years' imprisonment. This would resolve the discrepancy between sentencing powers for offences of child abduction and kidnapping and recognise the potential severity of an offence of child abduction. A 14 year maximum sentence also aligns the offence with other criminal offences of comparable seriousness.<sup>26</sup>

#### ***Criminalise a parent's wrongful retention of a child abroad***

We recommend that the offence under section 1 of the Child Abduction Act 1984 should be amended to include the case where the parent (or connected person), having taken or sent the child out of the UK with the appropriate consent, keeps or retains that child outside the UK without the appropriate consent or in breach of the conditions of the consent given.

#### **Option 2: Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention**

See 1(a) above.

Statutory offences of kidnapping and unlawful detention could be created as a discrete reform. This would resolve the problem identified with the current offences of kidnapping and false imprisonment. However, as the offences are closely related to those under the Child Abduction Act 1984 it would be a missed opportunity not to undertake wholesale reform of the problems identified. The problems with the Child Abduction Act 1984 would remain.

#### **Option 3: Extend the sentencing powers for offences of child abduction to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad**

See 1(b) above.

The problems with the Child Abduction Act 1984 could be resolved as a discrete reform. However, as the offences are closely related to kidnapping and unlawful detention it would be a missed opportunity not to undertake wholesale reform of the problems identified. The problems with the offences of kidnapping and false imprisonment would remain.

<sup>25</sup> The Court of Appeal in *Kayani* [2011] EWCA Crim 2871 expressed a concern that, even in cases where charging kidnapping was legally speaking an option, it was not charged because of the observation in *C* [1991] 2 FLR 252159 that it should not be charged in cases involving parents.

<sup>26</sup> The following are some examples of offences that have a 14 year maximum: Trafficking people for sexual exploitation; domestic burglary; various serious driving offence such as causing death by careless driving under the influence and causing death by dangerous driving; numerous drugs offences (including fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug – Class B; possession of a controlled drug with intent to supply it to another – Class B or C; production of a controlled drug – Class B or C); money laundering offences under the Proceeds of Crime Act 2002 and various sexual offences including those related to children under 13 and those protecting people with a mental disorder.

# Costs and benefits analysis

This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

When calculating the net present value (“NPV”) for the impact assessment we have used a time frame of ten years, with the present being year 0. We have assumed that the transitional costs and benefits occur in years 0, 1 and 2, and ongoing costs and benefits accrue in year 1 to 10. We have used a discount rate of 3.5%, in accordance with HM Treasury guidance. Unless stated all figures are in 2013/14 prices, and have been updated using the GDP deflator.

The Ministry of Justice guidance on rounding says that figures below one million are rounded to the nearest £500,000. However as our figures are very low this would make it impossible to distinguish between the different policy options. We have therefore left the figures unrounded.

## Option 0: Do nothing [base case]

Because the “do-nothing” option is compared against itself its costs and benefits are necessarily zero, as is its NPV.<sup>27</sup> However the problems identified above in the present law of kidnapping, false imprisonment and child abduction will continue. The uncertainty of these offences has not hitherto been reflected in the evidence base. However, it is likely to cause wasted court time and public funds spent in legal argument, and in the resulting appeals.

## Option 1:

- (a) Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention; and
- (b) Extend the sentencing powers for offences of child abduction to 14 years’ imprisonment and criminalise a parent’s wrongful retention of a child abroad.

## Costs

### Transitional Costs

#### 1. Training (kidnapping, unlawful detention and child abduction)

There may be some negligible one-off costs associated with training and familiarisation for the police, the judiciary, prison staff, etc. This is anticipated to form part of regular continued professional development that legal practitioners, etc are expected to undertake.

#### 2. Small initial spike in appeals in child abduction cases

Reforming the Child Abduction Act 1984 may result in a very small initial spike in appeals, both of sentence and conviction, as practitioners and judges gain an understanding of the new law. However, the number of cases prosecuted in respect of the existing offences are very small, see Table 5. Offences under sections 1 & 2 of the Child Abduction Act 1984 are triable either in the magistrates’ court or the Crown Court. Accordingly, appeals are heard in the Crown Court or Court of Appeal Criminal Division respectively.

### Ongoing Costs

#### 3. Small increase in prosecutions as a result of the criminalisation of wrongful parental [or connected

<sup>27</sup>

The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

### *person] retention of a child abroad*

A small increase in prosecutions will arise from extending section 1 of the Child Abduction Act 1984 as the reform will criminalise conduct which is not criminal under the current law. This would be triable in the magistrates' court or the Crown Court, depending on seriousness. However, the number of cases prosecuted in respect of the existing offences are very small, a maximum of 8 per year under section 1 and 40 under section 2 (see Table 5) and so it is anticipated that there will only be a small number of additional prosecutions.

By way of illustration we provide an example of the additional cost per prosecution that might occur. We use two proxy offences, 'abduction of child by parent', and 'burglary in a dwelling with intent to commit an offence' to provide the estimate range. The low estimate is indicated with reference to the 'abduction of child by parent' and the high estimate is indicated with reference to a 'burglary in a dwelling with intent to commit an offence'. The mid-point between the two is the best estimate. Under this scenario an additional prosecution could cost the Criminal Justice System a further £23,000, as a best estimate and up to an approximate range of £13,000 to £33,000 per defendant.

In relation to the current child abduction offence If 10 defendants were proceeded against per year for the proposed new offence total cost to the Criminal Justice System would be approximately £230,000 [best estimate] within a range of £130,000 to £330,000.

#### *4. Increased costs to NOMS (prison and probation) arising from the sentence increase in Child Abduction cases and the criminalisation of wrongful parental retention abroad*

The recommendation to increase the maximum sentence length in child abduction cases from 7 years to 14 years imprisonment impacts on sections 1 and 2 of the 1984 Act and is likely to increase the number of custodial [prison] sentences. By way of estimating the extent of increase it is assumed that only those that would previously have received the maximum sentence length [i.e. 6-7 years] will now receive a higher sentence. The average sentence is currently 21 months, see Table 5 above.

The new expected sentence length, for the small number of defendants who will receive a higher sentence, is assumed to be the mid-point between the average custodial sentence length for the upper boundary proxy and the new maximum length of 14 years which is 8 years and 3 months. The expected increase in cost of an offender is expected to be:

- i. Section 1: £9,200<sup>28</sup> to NOMS of which £8,300 is for prison and £800 is probation
- ii. Section 2: £6,400 to NOMS of which £5,800 is prison and £600 is probation

#### *5. Extradition*

It is anticipated that criminalising a parent's retention of a child abroad will result in a small increase in UK extradition requests to bring those suspected of the offence for trial. Some of these costs are likely to be offset by the corresponding savings resulting from a reduction in family proceedings under the Hague Convention on International Child Abduction. It has not been possible to monetise these costs.

### **Benefits**

#### **Transitional Benefits**

We do not predict any transitional benefits of Option 1.

#### **Ongoing Benefit**

#### *6. Prosecution savings (deciding between kidnapping and unlawful detention)*

Under the current law the distinction between kidnapping and false imprisonment is unclear. Creating statutory offences of kidnapping and false imprisonment will solve this problem. Accordingly, in cases where it is currently unclear, reform will save the need for the police and CPS

<sup>28</sup> Total sum reflects rounding to the nearest £100

to spend time and resources deciding which offence to charge, and with it the possibility of failed prosecutions because the wrong offence was charged. However, as we do not know how many of these borderline cases there are at present, it has not been possible to monetise this benefit.

#### *7. Reduction in court time for trials for kidnapping and unlawful detention*

Creating statutory offences of kidnapping and unlawful detention will streamline and clarify the offences. It is anticipated that this may result in a reduction of court time needed to deal with cases where these offences have been charged, as a result of:

- (1) increased guilty pleas;
- (2) reduced legal argument by Counsel;
- (3) reduced judicial summing up to the jury; and
- (4) reduced need for jurors to ask questions during deliberations.

It has not been possible to monetise the efficiency savings.

#### *8. Reduction in appeals against conviction for kidnapping and unlawful detention*

Creating statutory offences of kidnapping and unlawful detention will significantly clarify the law. This is likely to reduce the number of appeals against conviction because the newly streamlined offences will be far less likely to be misapplied.

#### *9. Reduction of proceedings under the Hague Convention for the wrongful retention of a child*

Extending section 1 of the Child Abduction Act 1984 may result in a reduction in proceedings for wrongful retention under the Hague Convention

- (1) This cost may be met by either the individual themselves or by the Legal Aid Agency, depending on eligibility.
- (2) These benefits of course do not include the non-monetisable but highly significant costs in terms of emotional suffering and mental health impact which is felt by the victims of international child abduction.

#### *10. The deterrent effect of criminalisation of a parent's wrongful retention of a child abroad*

We have been informed by *reunite international* that the wrongful retention of children by their parents is increasing, possibly because defendant parents are aware of the gap in the law. By filling this gap, parents could be deterred from taking this action. Note, however, that the evidence on deterrence is mixed.

### **Option 2: Replace the common law offences of kidnapping and false imprisonment by creating statutory offences of kidnapping and unlawful detention**

## **Costs**

### **Transitional Costs**

#### *1. Training*

There may be some negligible one-off costs associated with training and familiarisation for the police, the judiciary, prison staff, etc. This is anticipated to form part of regular continued professional development that legal practitioners, etc are expected to undertake.

### **Ongoing Costs**

We do not predict any ongoing costs of Option 2.

## Benefits

### Transitional Benefits

We do not predict any transitional benefits of Option 2.

### Ongoing Benefit

#### *2. Prosecution savings (deciding between kidnapping and unlawful detention)*

Under the current law the distinction between kidnapping and false imprisonment is unclear. Creating statutory offences of kidnapping and unlawful detention will solve this problem. Accordingly, in cases where it is currently unclear, reform will save the need for the police and CPS to spend time and resources deciding which offence to charge, and with it the possibility of failed prosecutions because the wrong offence was charged. However, as we do not know how many of these borderline cases there are at present, it has not been possible to monetise this benefit.

#### *3. Reduction in court time for trials for kidnapping and unlawful detention*

Creating statutory offences of kidnapping and unlawful detention will streamline and clarify the offences. It is anticipated that this may result in a reduction of court time needed to deal with cases where these offences have been charged, as a result of:

- (5) increased guilty pleas;
- (6) reduced legal argument by Counsel;
- (7) reduced judicial summing up to the jury; and
- (8) reduced need for jurors to ask questions during deliberations.

It has not been possible to monetise the efficiency savings.

#### *4. Reduction in appeals against conviction for kidnapping and unlawful detention*

Creating statutory offences of kidnapping and unlawful detention will significantly clarify the law. This is likely to reduce the number of appeals against conviction because the newly streamlined offences will be far less likely to be misapplied.

## **Option 3: Extend the sentencing powers for offences of child abduction to 14 years' imprisonment and criminalise a parent's wrongful retention of a child abroad**

### Transitional Costs

#### *1. Training*

There may be some negligible one-off costs associated with training and familiarisation for the police, the judiciary, prison staff, etc. This is anticipated to form part of regular continued professional development that legal practitioners, etc are expected to undertake.

#### *2. Small initial spike in appeals in child abduction cases*

Reforming the Child Abduction Act 1984 may result in a very small initial spike in appeals, both of sentence and conviction, as practitioners and judges gain an understanding of the new law. However, the number of cases prosecuted in respect of the existing offences are very small, see Table 5. Offences under sections 1 & 2 of the Child Abduction Act 1984 are triable either in the magistrates' court or the Crown Court. Accordingly, appeals are heard in the Crown Court or Court of Appeal Criminal Division respectively.

## Ongoing Costs

### *3. Small increase in prosecutions as a result of the criminalisation of wrongful parental [or connected person] retention of a child abroad*

A small increase in prosecutions will arise from extending section 1 of the Child Abduction Act 1984 as the reform will criminalise conduct which is not criminal under the current law. This would be triable in the magistrates' court or the Crown Court, depending on seriousness. However, the number of cases prosecuted in respect of the existing offences are very small, a maximum of 8 per year under section 1 and 40 under section 2 (see Table 5) and so it is anticipated that there will only be a small number of additional prosecutions.

By way of illustration we provide an example of the additional cost per prosecution that might occur. We use two proxy offences, 'abduction of child by parent', and 'burglary in a dwelling with intent to commit an offence' to provide the estimate range. The low estimate is indicated with reference to the 'abduction of child by parent' and the high estimate is indicated with reference to a 'burglary in a dwelling with intent to commit an offence'. The mid-point between the two is the best estimate. Under this scenario an additional prosecution could cost the Criminal Justice System a further £23,000, as a best estimate and up to an approximate range of £13,000 to £33,000 per defendant.

In relation to the current child abduction offence If 10 defendants were proceeded against per year for the proposed new offence total cost to the Criminal Justice System would be approximately £230,000 [best estimate] within a range of £130,000 to £330,000.

### *4. Increased costs to NOMS (prison and probation) arising from the sentence increase in Child Abduction cases and the criminalisation of wrongful parental retention abroad*

The recommendation to increase the maximum sentence length in child abduction cases from 7 years to 14 years' imprisonment impacts on Sections 1 and 2 of the Act and is likely to increase the number of custodial [prison] sentences. By way of estimating the extent of increase it is assumed that only those that would previously have received the maximum sentence length [i.e. 6-7 years] will now receive a higher sentence. The average sentence is currently 21 months, see Table 5 above.

The new expected sentence length, for the small number of defendants who will receive a higher sentence, is assumed to be the mid-point between the average custodial sentence length for the upper boundary proxy and the new maximum length of 14 years which is 8 years and 3 months. The expected increase in cost of an offender is expected to be:

- i. Section 1: £9,200<sup>29</sup> to NOMS of which £8,300 is for prison and £800 is probation
- ii. Section 2: £6,400 to NOMS of which £5,800 is prison and £600 is probation

### *5. Extradition*

It is anticipated that criminalising a parent's retention of a child abroad will result in a small increase in UK extradition requests to bring those suspected of the offence for trial. Some of these costs are likely to be offset by the corresponding savings resulting from a reduction in family proceedings under the Hague Convention on International Child Abduction. It has not been possible to monetise these costs.

## Benefits

### Transitional Benefits

We do not predict any transitional benefits of Option 3.

### Ongoing Benefit

### *6. Reduction of proceedings under the Hague Convention for the wrongful retention of a child*

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<sup>29</sup> Total sum reflects rounding to the nearest £100

Extending section 1 of the Child Abduction Act 1984 may result in a reduction in proceedings for wrongful retention under the Hague Convention

- (3) This cost may be met by either the individual themselves or by the Legal Aid Agency, depending on eligibility.
- (4) These benefits of course do not include the non-monetisable but highly significant costs in terms of emotional suffering and mental health impact which is felt by the victims of international child abduction, and would be reduced under recommendation 2(ii).

#### *7 The deterrent effect of criminalisation of wrongful parental retention abroad*

We have been informed by *reunite international* that the wrongful retention of children by their parents is increasing, possibly because defendant parents are aware of the gap in the law. By filling this gap, parents could be deterred from taking this action. Note, however, that the evidence on deterrence is mixed.

## Assumptions and risks

There are broader assumptions that inform our approach to the monetisation of costs associated with Child Abduction offences and these are outlined in detail in Annex A.

## **Specific Impact Tests**

An impact assessment must consider the specific impacts of a policy option upon various groups within society. These specific tests are carried out below and refer to the implementation of Option 1.

### **Statutory equality duty**

We do not think that the proposed reform will have an adverse equality impact on any social groups as defined by their race, religion or belief, sexual orientation, gender, age or disability. Our recommendations are neutral in relation to these characteristics and do not propose any change from the current law in this regard.

### **Competition**

We do not anticipate that there will be any particular effect, whether positive or negative on competition.

### **Small business**

We do not anticipate that there will be any particular effect, whether positive or negative, on small business.

### **Environmental impact and wider environmental issues**

We do not anticipate that there will be any particular effect, whether positive or negative on the environment.

### **Health and well-being**

We do not anticipate that there will be any particular effect, whether positive or negative on health and well-being.

### **Human rights**

Our recommendations in relation to kidnapping and false imprisonment clarify the definition of those offences and therefore accord with the rights of the accused under Article 7 of the European Convention on Human Rights. Our recommendations in relation to child abduction will also accord with Article 7 as they will only apply to conduct committed on or after the date of implementation.

### **Justice system**

We have considered the impact that the proposed reform could have on the criminal justice system (in terms of the legal profession, the judiciary and HMCTS throughout this impact assessment). Therefore, it is unnecessary to conduct a further, specific impact assessment on this issue.

## **Progression of cases through the CJS**

### **Offence Extension**

Two proxy offences have been used to estimate the flow of the new offence extension through the CJS. The following proxies were used:

- Section 9(1)(a) of the Theft Act 1968 has been used as the upper boundary proxy, due to the comparability of the maximum sentence of the proposed offence extension.
- Section 9(1)(a) makes it an offence to carry out burglary in a dwelling with intent to commit an offence triable only on indictment. The maximum sentence is 14 years imprisonment.
- Section 1 of the Child Abduction Act 1984 (as amended by Children Act 1989) is comparable to the proposed offence, albeit with a maximum sentence length of only 7 years. It is used as a lower boundary proxy.
- Section 1 makes it an offence for a parent to send or take (abduct) a child under the age of 16 out of the UK without the appropriate consent.
- It does not carry the same maximum available sentences as the proposed new offence (6 months imprisonment for summary conviction, 7 years imprisonment for indictable conviction).

### **Sentencing change**

- It is assumed that the new average custodial sentence length (ACSL) for cases that previously received the maximum custodial sentence of 6-7 years will be the midpoint between 14 years and the ACSL for the upper boundary proxy offence, which is Section 9(1)(a) of the Theft Act 1968 has been used as the upper boundary proxy, due to the comparability of the sentencing profile with the expected offence.

<b>Assumptions</b>	<b>Risks</b>
<p><b>Offence Extension</b></p> <p><b>Proportion of cases tried in the magistrates' vs. the Crown Court</b></p> <ul style="list-style-type: none"> <li>• It is assumed that between 0%-50% of defendants are tried in the magistrates' court.</li> <li>• It is assumed that between 50%-100% of defendants may be tried in the Crown Court.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/14.</p>	<ul style="list-style-type: none"> <li>• Such a large range for trial in the Crown Court using a small sample to estimate the central boundary may not be representative.</li> </ul>
<p><b>Offence Extension</b></p> <p><b>Proportion of defendants found guilty</b></p> <ul style="list-style-type: none"> <li>• It is assumed that no more than 86% of defendants are convicted.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/14.</p>	<ul style="list-style-type: none"> <li>• More defendants will be convicted.</li> </ul>
<p><b>Offence Extension</b></p> <p><b>Disposals given:</b></p> <ul style="list-style-type: none"> <li>• It is assumed that of those convicted, between 73% and 82% of offenders</li> </ul>	<ul style="list-style-type: none"> <li>• That the ACSL given is longer.</li> <li>• Offenders given less than 12 months in</li> </ul>

<p>are given a custodial sentence.</p> <p><b>ACSL:</b></p> <ul style="list-style-type: none"> <li>It is assumed that the ACSL will be between 21 and 29 months.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013/4.</p>	<p>custody are not currently subject to supervision on release. In the future under the Offender Rehabilitation Act 2014 this will change but for the purposes of this IA we have based estimates of cost on current practice.</p>
<p><b>Offence Extension</b></p> <ul style="list-style-type: none"> <li>Our analysis does not take into account the possible interaction with other policies that have not yet been commenced.</li> </ul>	<ul style="list-style-type: none"> <li>There is the risk that such policies, once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.</li> </ul>
<p><b>Sentencing change</b></p> <p><b>Increase to ACSL:</b></p> <ul style="list-style-type: none"> <li>It is assumed that the new ACSL for cases that previously received the maximum custodial sentence of 6-7 years will be the midpoint between 14 years and the ACSL for the upper boundary proxy offence. This amounts to roughly 100 month average sentence for these offenders.</li> </ul>	<ul style="list-style-type: none"> <li>A higher ACSL for those offenders receiving the current maximum sentence would mean a higher increase in cost per-offender.</li> </ul>
<p><b>Cost assumptions</b></p>	
<p><b>CPS costs, advocacy costs:</b></p> <ul style="list-style-type: none"> <li>The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks).</li> </ul> <p>Source: CPS 2014; MoJ internal analysis, 2014.</p>	<ul style="list-style-type: none"> <li>The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): <a href="http://www.cps.gov.uk/publications/finance/abc_guide.pdf">http://www.cps.gov.uk/publications/finance/abc_guide.pdf</a>.</li> </ul>
<p><b>HMCTS costs (magistrates):</b></p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14. HMCTS timings</p>	<p>Timings data for offence categories:</p> <p>The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits. The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times</p>

<p>data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.</p>	<p>as there is no timing available e.g. when a DJ(MC) sits.  Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.  The timings are collection of data from February 2009. Any difference in these timings could influence Costings.  The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the Costings could ultimately be underestimates.  Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).</p> <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p><b>HMCTS costs (crown):</b></p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2013/14 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14.</p>	<p>Timings data for types of cases:</p> <p>The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.  Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that Costings are an underestimate.  The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</p> <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example</p>

	juror costs.
<p><b>Legal Aid Costs:</b></p> <p><i>Cases in the magistrates court</i></p> <ul style="list-style-type: none"> <li>It is assumed that the eligibility rate for legal aid in the magistrates' court is 50%.</li> <li>The average cost per case in the magistrates' court is £485, where there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: <a href="https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014">https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</a> (Main tables, table 2.3).</li> </ul> <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> <li>It is assumed that the eligibility rate for legal aid is 100%.</li> <li>The average cost per defendant is around £4,500 in 2013/14 prices</li> <li>We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2013/14 data as a proxy for the cost per defendant.</li> </ul> <p>Source: <a href="https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014">https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</a></p>	<p><i>Magistrates court</i></p> <ul style="list-style-type: none"> <li>Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the Costings.</li> <li>More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> </ul> <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> <li>Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</li> <li>There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> </ul>
<p><b>Prison costs:</b></p> <ul style="list-style-type: none"> <li>We assume that an offender serves half of their given custodial sentence:</li> <li>This means it is assumed that offenders will on average serve between 10 and 15 months in prison.</li> <li>The cost per prison place per annum is approximately £28,000.</li> </ul> <p>Source: NOMS management accounts addendum (2012/13).</p>	<ul style="list-style-type: none"> <li>The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.</li> </ul>
<p><b>Probation costs:</b></p> <p><b>Post release licence costs:</b></p> <ul style="list-style-type: none"> <li>It is assumed that post release probation costs are between approximately £1,200 and £2,800 per year in 2013/14 prices.</li> </ul>	<ul style="list-style-type: none"> <li>We have based our estimates on current practice. However the Offender Rehabilitation Act 2014 includes provisions to introduce post release licence conditions for offenders given a custodial sentence of less than 12 months.</li> <li>After the commencement of these provisions, there will be costs associated</li> </ul>

<p><b>Independent probation costs:</b></p> <ul style="list-style-type: none"> <li>• Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices.</li> <li>• The independent probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and updated in line with the GDP deflator of 1.84% (<a href="https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts">https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts</a>).</li> </ul> <p><i>Source: MoJ internal analysis, 2013/14.</i></p>	<p>with post release licence for offenders convicted of this offence who are sentenced to immediate custody. The wider costs of extending post-release supervision to any offenders released from short custodial sentences will be met through savings realised from the Transforming Rehabilitation reforms to probation services.</p>
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