Regulatory Impact Statement: Programme conditions for Extended Supervision Orders

Coversheet

Purpose of Document	
Decision sought:	The purpose of this regulatory impact statement is to support Cabinet consideration of policy decisions for amendments to extended supervision orders in the Parole Act 2002.
Advising agencies:	Department of Corrections
Proposing Ministers:	Minister of Corrections
Date finalised:	2 August 2023

Problem Definition

Following a declaratory judgment by the Hight Court, there are 26 high-risk offenders with complex needs being managed on extended supervision orders (ESO) who have unlawful programme conditions in place as they are residing with the provider instead of having a separate provider for residential and programme conditions separately. These programme conditions are intended to support the rehabilitation and reintegration of the person safely into society via providing prosocial and purposeful daily activities. As these programme conditions are unlawful Corrections is unable to enforce these conditions which gives rise to significant risks to public safety given the serious nature of these individuals offending history and characteristics.

Executive Summary

An ESO is a post-sentence order that can be imposed by the Court on offenders living in the community who have exhibited long-term patterns of serious sexual or violent offending and pose a real and ongoing risk of reoffending. There are currently 256 people subject to an ESO. Offenders on an ESO can be subject to conditions set by the Parole Board, including requiring the offender to participate in a programme to reduce the risk of reoffending (referred to as a programme condition).

On 27 June 2023, the High Court determined that s107K(3)(bb)(ii) of the Parole Act 2002 prevents the Parole Board from imposing programme conditions that require or result in offenders subject to an ESO residing with their programme providers. Corrections currently manages 26 high-risk ESO offenders who are subject to conditions affected by the judgment and managed in six different locations, with more exhibiting increasingly levels of risk who may benefit from being placed on a programme condition. The key risk of these day-time conditions being affected is that they are consequently unenforceable.

Corrections' longstanding practice is to have the same provider deliver residential conditions and programme conditions for a small cohort of high-risk offenders. A small group of expert providers have, over many years and in some cases over multiple

decades, developed facilities and expertise to work with these highly complex offenders for whom finding accommodation and support is extremely challenging. These people have substantial histories of serious sexual offending (including convictions for child sex offending) and/or violent offending that make them among the highest risk offenders to house in the community unsupported.

The problem is that current practice is contrary to the High Court's judgment, meaning the ESO conditions where the offender is residing with the provider are unlawful and are unable to be enforced. This has implications for the wellbeing of affected offenders and consequently public safety. Corrections has identified two options in addition to the counterfactual to address the problem:

a. Counterfactual – Parole Board would conduct hearings for each of the 26 impacted offenders to amend the conditions of their ESO and likely remove the programme conditions.

b. Legislative change – the Parole Act would be amended to clearly enable an offender on an ESO to be required to reside with the same service provider that delivers any programme conditions, with safeguards in place to avoid de facto 24-hour monitoring.

c. Operational change – Corrections would enable operational and physical separation of programme and residential providers through changes to current contracting arrangements including procuring new providers where needed.

Legislative change is the best option to meet the objective of ensuring the day-to-day management of people subject to ESOs safely supports offenders to reintegrate into society while balancing the persons rights with the risks to public safety.

The other options are not recommended as not only are there very few providers that are suitably experienced to work with this cohort of offenders, but the disruption that would come from moving between different sites and different providers will have negative consequences for the offender's rehabilitation and reintegration.

There are little to no impact on parties from the preferred option, and implementation is straightforward, given the overall impact of the legislative change is to make the status quo lawful. There are some offenders who will need to have their current conditions amended by the Parole Board to clarify that they are not subject to de facto 24- hour monitoring.

Limitations and Constraints on Analysis

This regulatory impact analysis was completed under urgency due to the risks arising from the High Court's declaratory judgment and therefore the options in this analysis have not gone through consultation, nor has there been any Te Tiriti o Waitangi | Treaty of Waitangi analysis. There have been some discussions with one service provider on how they operate and work with this cohort of offenders.

There is also limited available evidence into the effectiveness of these programme conditions for managing the risks associated with this cohort of high-risk sexual and/or violent offenders. There is also no New Zealand data on the effectiveness of operating a single service provider model verses separate providers for each condition or programme.

Responsible Manager (completed by relevant manager)	
 Marian Horan Manager, Legislative Policy Department of Corrections 2 August 2023	
Quality Assurance (completed by QA panel)	
Reviewing Agency:	Department of Corrections and New Zealand Police
Panel Assessment & Comment:	A joint QA panel with members from the Department of Corrections and New Zealand Police has reviewed the Regulatory Impact Statement and considers that it partially meets the Quality Assurance criteria. The statement is clear, concise and overall convincing but, as noted in the RIS, there is limited evidence available to support the analysis and the proposal has not been consulted on.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

An Extended Supervision Order can be imposed by a court on a person who is deemed to be at high risk of sexual or violent offending

2. Extended supervision orders (ESO) are a post-sentence order that was introduced into the Parole Act 2002 (the Parole Act) in 2004 and are intended to protect members of the community from those that pose a real and ongoing risk of committing serious sexual or violent offending. This is done by putting in place a series of conditions on a person to monitor and manage their risk while in the community.

3. A person is eligible for an ESO if:

    a. they have been sentenced to a determinate sentence of imprisonment for a relevant sexual or violent offence, or

    b. has arrived in New Zealand within 6 months of ceasing to be subject to any sentence, supervision conditions, or order imposed on the person for a relevant offence by an overseas court; and has, since that arrival, been in New Zealand for less than 6 months; and resides or intends to reside in New Zealand, or

    c. has been convicted of a relevant offence and in respect of that offence has been determined to be a returning prisoner under the Returning Offenders (Management and Information) Act 2015, or

    d. is a person to whom subpart 3 of Part 2 of the Returning Offenders (Management and Information) Act applies (a person who returns to New Zealand more than six months after release from custody).[1]

4. The Department of Corrections (Corrections) may apply for an ESO to be imposed on eligible offenders who pose real and ongoing high risk of further sexual offending or very high risk of further violent offending. Applications must be accompanied by a health assessors report that speaks to one or both of the following matters:

    a. whether –

        i. the offender displays each of the traits and behavioural characteristics specified in s107IAA(1) which relate to risk of sexual reoffending, self-regulatory capacity or displays evidence of clear and long term planning of serious violent offences, and an absence or understanding or concern for the impact on their victims; and

        ii. there is a high risk that the offender will in future commit a relevant sexual offence:

    b. whether –

        i. the offender displays each of the behavioural characteristics specified in s107IAA(2) which relate to risk of violent reoffending, self-regulatory capacity, and a lack of remorse or absence or understanding or concern for the impact on their victims; and

[1] Section 107C of the Parole Act 2002

ii. there is a very high risk that the offender will in future commit a relevant violent offence.[2]

5. Courts may grant an ESO, for a period of up to ten years and it can be renewed before expiry, when satisfied that the offender has exhibited a pattern of serious sexual or violent offending and poses a real and ongoing risk of committing such offences.[3]

6. A person on an ESO is actively monitored by Corrections according to the standard or special conditions of the order. The special conditions are imposed by the New Zealand Parole Board (Parole Board) with the exception of intensive monitoring which can only be imposed at the direction of the court. Intensive monitoring may only be imposed on an offender once and for no more than the first 12 months of the ESO. Intensive monitoring is a condition intended to closely supervise an offender who poses the highest levels of risk to the community, and requires the offender to submit to being accompanied and monitored (ie person-to-person monitoring) for up to 24 hours a day.[4]

The Parole Board may impose special conditions for offenders on ESOs to monitor and assist their rehabilitation and safe reintegration into the community

7. While the ESO is a post-sentence order imposed by the court, it is the Parole Board that is given the discretion to impose special conditions under s107K(1) of the Act (noting, however, that the court can impose special conditions on an interim basis).

8. Each offender can have a number of special conditions attached to their ESO that are designed to:

   a. reduce the risk of reoffending by the offender or

   b. facilitate or promote the rehabilitation and reintegration of the offender or

   c. provide for the reasonable concerns of victims of the offender.[5]

9. People on an ESO are subject to conditions similar to parole. The Parole Act contains a non-exhaustive list of the kinds of special conditions that may be imposed by the Parole Board. They include conditions relating to:

   a. directing where the person lives and/or what times they have to be at their residence. This can be by way of a conditions that require an offender to reside at a particular place and/or residential restrictions relating to the hours that an offender must be at their place of residence (referred together as 'residential conditions'). Examples of residential restrictions and residential conditions are shown in Appendix One.

   b. prohibiting the person from consuming alcohol or drugs

   c. preventing the person from associating with any person or class of persons such as

   d. restricting the person's use of electronic devices used to access the internet or capture and store images.

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[2] Section 107F of the Parole Act 2002

[3] Sections 107C(1)(a)(iii), 107FA-107IAA of the Parole Act 2002

[4] Sections 107IAB-107IA of the Parole Act 2002.

[5] Section 15 and 107K of the Parole Act 2002.

e. requiring the person to take prescription medication,

f. requiring the person to participate in rehabilitative and reintegrative programmes to reduce the risk of further offending (programme conditions),

g. prohibiting a person from entering specified places or areas, and

h. requiring the person to submit to electronic monitoring.

10. The Parole Act has a series of guiding principles outlined in section 7, which includes that 'when making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Board in every case is the safety of the community'.[6] Section 7(2)(a) of the Parole Act goes on to state that one of the other principles that must guide the Parole Board is that offenders 'must not be subject to release conditions that are more onerous, or last longer, than is consistent with the safety of the community'.

11. The Parole Board is also required to comply with New Zealand Bill of Rights Act 1990 (BORA). Therefore, any restrictions placed on freedoms and rights (such as freedom of movement) may only be subjected to such reasonable limits presribed by law as can be demonstrably justified in a free and democratic society. This means that any limitation must be necessary and proportionate, and enabled by the law.

It is an offence to breach a condition of an ESO

12. If an offender breaches any of the conditions of their ESO they can be prosecuted and are liable on conviction to imprisonment for a term not exceeding two years.[7] Additionally, where the offender is convicted of breaching a condition of their ESO, the Chief Executive must notify every victim of the offender.

13. A breach is progressed by Corrections filing a criminal charge in the District Court for breaching their ESO conditions. If necessary, we can ask Police to arrest the offender for the breach. Depending on the case, they may be remanded in custody or bailed if they plead not guilty.

14. Not all breaches are prosecuted, only those that meet the threshold for prosecution outlined in the Solicitor-General's Prosecution Guidelines including the public interest test. The public interest test includes consideration of the seriousness of the offence, if the offence is likely to be repeated, the risk of harm, and the likely penalty. For example, if the breach is minor or a one-off situation probation staff have a range of options to address the non-compliance including, accepting the reasons and taking no action, working with the offender to address the issues that contributed to the non-compliance, or issuing them with a sanction.

The rights of victims are taken into account by the Parole Board when setting conditions for an ESO, and Corrections has an obligation to notify victims in certain circumstances

15. In their role in setting the conditions for the ESO the Parole Board is required to provide for reasonable concerns of victims. The Parole Board has an obligation under s107K(6) of the Parole Act to notifying 'every victims of the offender, if it is considering imposing special conditions'. The victims then have the opportunity to make a written submission to the Parole Board on their views on if special conditions should be imposed, what those conditions should be, and for how long.

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[6] Section 7(1) of the Parole Act 2002

[7] Section 107T of the Parole Act 2002.

16. In addition to this, one of the standard conditions for all ESO is that the offender must not associate with or contact a victim of their offending without the prior written approval of their probation officer.[8]

17. Corrections also has an obligation to notify every victim of an offender subject to an ESO in the following circumstances:

    a. The offender is convicted of a breach

    b. The ESO expires, or

    c. The offender dies.[9]

The ESO regime has been found to be an unjustified limit on the right to not be subject to retroactive penalties and double punishment granted in s22 of the Bill of Rights Act

18. Section 26 BORA protects individuals against retroactive penalties and double punishment. Double jeopardy arises from the restrictive nature of an ESO adding a further penalty on top of the sentence the person has already completed for past offending.

19. The original ESO regime and subsequent amendments have all been found to be inconsistent with s26 of BORA by successive Attorneys-General.[10]

20. The courts have also found that the ESO regime is inconsistent with the protection against double punishment under s26(2) of BORA and that limitation cannot be justified.[11]

The imposition of significant residential restrictions that amount to 24-hour monitoring could infringe on the right against arbitrary detention guaranteed in section 22 of BORA

21. In s22 of BORA there is a protection against arbitrary detention. While the ESO regime does not typically authorise detention, being on an ESO can amount to significant restrictions on a person's freedom of movement. For example, if an offender had a combination of conditions that amounted to 24-hour monitoring or supervision (such as a residential condition between 6pm and 8am, and a programme condition between 8am and 6pm), the effect for the individual would be a form of detention.

22. To mitigate the potential for arbitrary detention, there is a provision within the Parole Act that requires the following 'high-impact' conditions to be reviewed every two years by the Parole Board to ensure the continuation is justified:

    a. a residential condition that requires the offender to stay at a specified residence for more than a total of 70 hours during any week

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[8] Section 107JA(1)(j) of the Parole Act 2002

[9] Section 107V of the Parole Act 2002.

[10] Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision) and Sentencing Amendment Bill – 2003, Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill – 2 April 2009, Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill – 27 March 2014. Accessed at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/section-7-reports/ 26 July 2023.

[11] *Chisnall v Attorney-General* [2021] NZCA 616, [2022] 2 NZLR 484.

b. a condition requiring the offender to submit to a form of electronic monitoring that enables the offender's whereabouts to be monitored when the offender is not at his or her residence.[12]

There is a small subset of people who require intensive holistic support to safely reintegrate into the community as they do not meet the threshold for a public protection order

23. New Zealand also has a more restrictive regime called a public protection order (PPO) for the most serious sexual or violent offenders who cannot be safely managed in the community and must be detained in a secure civil facility.[13] The threshold for a PPO is high and includes a significant assessment and application process including a thorough psychological assessment, which means they are extremely rare. There are currently two people subject to a PPO.

24. There are currently (as at 26 July 2023) 256 people subject to an ESO, of this there is a small subset who do not meet the threshold for a PPO but still pose a significant risk to the community (approximately 10 percent of all those subject to an ESO). These people require a more intensive set of conditions to manage the risk and support them to live in the community safely compared with the majority of those subject to an ESO. These individuals often have a long history of offending and have high and complex needs, such as low cognitive functioning or significant mental health challenges, meaning one effective way of managing them is to have both a residential and programme condition to support the person through structure and daily activities.

Programme conditions alongside residential conditions enable Corrections to support the ESO offenders' daily activities, and therefore better ensure the safety of victims and the public

25. The combined use of residential conditions and programme conditions can assist some ESO offenders to engage in purposeful activities with the intention of supporting their wellbeing and reintegration into our communities. Combined they are also a significant mechanism for ensuring that their risk of re-offending is minimised, particularly where there is a single provider who can provide the necessary holistic continuity of support.

26. Activities that make up the programme, for example, may begin first thing in the morning upon waking and continue throughout the day into the evening with periods of free time. It includes such things as grocery shopping, counselling, training or employment, alcohol and drug counselling, and exercise. The residential facilities this group of offenders are typically housed in and have 24-hour staffing to support these programmes.

27. See Appendix Two for examples of current offender's programme conditions for individuals who are located at two facilities funded by Corrections for high-risk offenders, S 9(2)(a) One of the activities in example one in Appendix Two is S 9(2)(a) For this activity the person will talk with their case worker on how they plan to get to the lake for the walk, what they will do when they get there, what coping strategies they will use to manage any challenges they face such as unexpected events or meeting someone who represents their typical victim, and how they will get back to the residence. Once the

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[12] Section 107RB of the Parole Act 2002.

[13] The current civil detention facility, Matawhaiti, is located at Christchurch Men's Prison

offender returns, they will talk with their case worker on how they trip went and what they might want to work on next time.

28. Despite programme conditions sometimes stating that conditions can occur between, for example, 8am to 6pm, offenders are not required to be accompanied when not attending activities. Daily schedules for all existing ESOs living in the community allow for free time, as shown in grey in Appendix One. This is in keeping with the legislative parameters that require that ESO offenders do not experience residential restrictions equivalent to 24-hour monitoring unless a court has specifically imposed the “intensive monitoring” that can be used for up to the first 12 months after an offender leaves prison.[14]

29. In practice, ESO offenders come and go every day from their residences for periods relative to their safety levels and they are not accompanied by staff. In one case, staff routinely accompany an offender when they leave their residence as the offender and his programme provider have agreed that level of support is required for him to move about safely in public spaces. They are, nevertheless, unsupervised at times while at the residence.

30. The intention with these types of programme and activities is to provide these individuals with the coping strategies and structures for living life safely in the community once they get to the end of their ESO. Offenders may have their conditions varied while on the ESO, or even have their ESO removed, depending on their progress or shifts in risk levels.

Corrections has a small number of providers to deliver services, programmes and housing for offenders on an ESO with programme and residence conditions with a single provider

31. Corrections has both internal and external provision for offenders on an ESO with programme and residence conditions. There are very few providers in New Zealand who are suitably qualified and experienced to work with, or house, high risk sexual and violent offenders. In particular, people with significant sexual offence histories can be extremely challenging to place given the public sentiment towards these individuals, and the need to avoid close proximity to places designed for children, such as schools and parks.

32. The external providers are contracted by Corrections to deliver services to people managed by Corrections, including people recently released from prison and those subject to an ESO. The current main providers are Salisbury Street Foundation in Christchurch, and Pact Group in Dunedin.

33. Corrections also has three houses on prison land – Kaainga Taupua at Spring Hill Corrections Facility, Toruatanga at Christchurch Men’s Prison, and Te Korowai at Rimutaka Prison. Kaainga Taupua is managed by Anglican Action, while Toruatanga and Te Korowai are run by Corrections staff. While all these houses are on prison land they do not form part of the designated prison complex as they sit ‘outside the wire’ and operate without the usual security of the prison such as restrictions on visitors.

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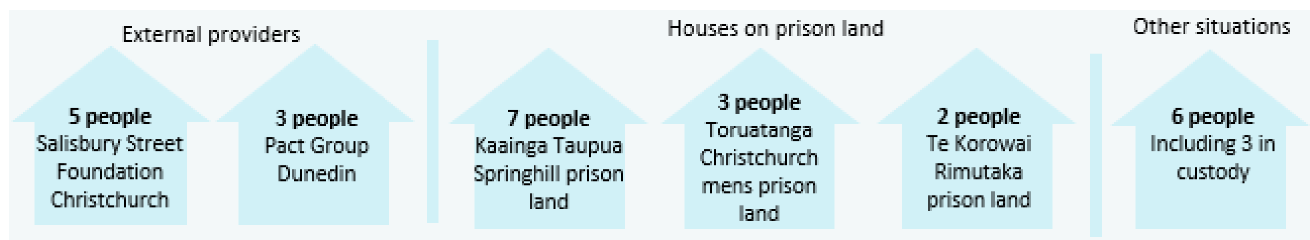
[14] “Intensive monitoring is a high tariff monitoring condition for people subject to an ESO who currently evidence poor self-management and need external management to mitigate their likelihood of reoffending. It requires someone to be actively monitored in person for 24 hours each day”, s 107IAC of the Parole Act 2002.

9(2)(ba)(i)

There are currently 26 high-risk people on an ESO with a programme and residence condition that results in the offenders residing with their programme provider

36. Corrections currently manages 26 offenders on an ESO who the Parole Board have imposed both a programme and a residence condition where the provider is the same for both conditions. Of the 26, 14 have Māori whakapapa, four have Pacific Island heritage, and one is a woman. It is also worth noting that of the 26, seven have diagnosed disabilities, and 14 have diagnosed mental illnesses, including foetal alcohol spectrum disorder, schizophrenia, and personality disorders.

37. These 26 offenders are predominately placed across one of six sites as follows:



38. Of the six people not at one of the five sites above, three are in custody for either breaching the conditions of their ESO or further offending, and three are with individual providers including two for health reasons.

39. Appendix Three contains two case studies of offenders currently on an ESO who are subject to both a programme and a residence condition. These case studies show the kinds of offending histories that are typical for these high-risk ESO offenders who require long-term wraparound support to minimise their re-offending risks. Both of these offenders have a significant history of sexual offending over a number of years (one against sex workers that included threats of violence, and one against minors including family members), possession of objectionable material, show limited or no remorse, and are of high-risk of reoffending.

40. As these case studies and evidence shows, these individuals are typically exhibiting a range of complex challenges that benefit from a holistic and stable approach to support their rehabilitation and reintegration that a single provider provides.

The Human Rights Commission in their submission to the court was of the view that the intent of s107K(3)(bb) was to reduce the punitive nature of the legislation by prohibiting the offender to reside with their programme provider

41. While not party to the proceedings before the High Court, the Human Rights Commission was invited to provide a submission to provide an alternative perspective to that put forward by Corrections and the Parole Board. In their submission they argued for the broad interpretation of the legislation in that Parliament intended that an

offender on an ESO should be prohibited from residing with their programme provider in order to reduce the punitive or penal character of the condition.[15]

42. It was their view that by having a single provider providing both the programme and the residential conditions has the same effect as a form of detention as the offender is subject to the direction of a single agency for 24 hours a day. It was their argument this is done in two ways, first by the intensity and the impact of the conditions, and secondly that from the offender's perspective it is one agency that controls every aspect of their day-to-day living.[16]

In 2014, the Parole Act was amended, creating parameters around how programme and residential conditions for ESOs are to be provided

43. On 12 December 2014, the Parole (Extended Supervision Orders) Amendment Act (2014 Amendment Act) came into force. This 2014 Amendment Act was developed as part of a suite of changes to protect the public from the highest risk sexual or violent offenders, including the establishment of the PPO regime, and a number of enhancements to ESO for those that didn't meet the threshold for a PPO.

44. This amendment introduced the 12 month limit on intensive monitoring, and included the insertion of s107K(3)(bb) into the Parole Act to avoid a replication of intensive monitoring through another means and without the safeguards provided for by the court. This has meant that the highest risk people on ESOs have first been monitored 24 hours for the first 12 months out of prison, providing an intermediate step towards greater independence after that 12-month period.

45. Section 107K(3)(bb) states that when the Parole Board imposes special conditions under s107K, any condition requiring that the offender participate in a programme must not:

    a. require that the offender be, or result in the offender being, supervised, monitored, or subject to other restrictions, for longer each day than is necessary to ensure the offender's attendance at classes or participation in other activities associated with the programme (s107K(3)(bb)(i)) or

    b. require the offender to reside with, or result in the offender residing with, any person, persons, or agency in whose care the offender is placed(s107K(3)(bb)(ii)).

46. Section 107RB was also inserted into the Parole Act to require that the Parole Board review every high-impact condition every two years to ensure the condition is still appropriate.[17]

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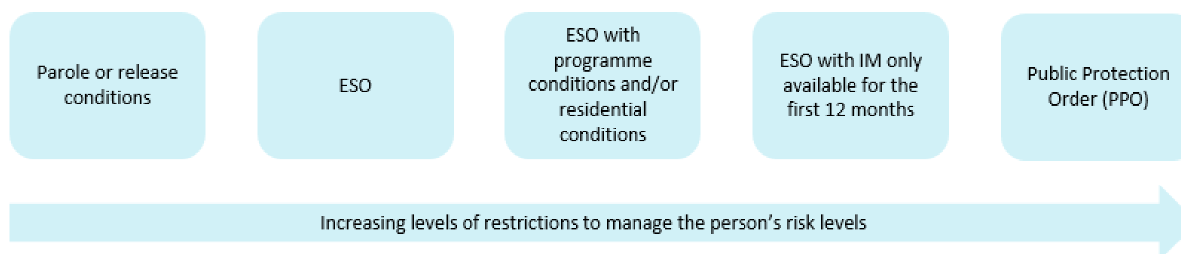
[15] Submission by the Human Rights Commission | Te Kāhui Tika Tangata dated 20 January 2023, in relation to 2023 High Court judgment *New Zealand Parole Board v Attorney-General* [2023] NZHC 1611, at [50-52].

[16] *New Zealand Parole Board v Attorney-General* [2023] NZHC 1611, at [41].

[17] A high-impact condition is defined as a residential condition requiring an offender to reside at a particular address for more than 70 hours per week, or an electronic monitoring condition that monitors the offender's whereabouts when they are not at their residential address. Refer s107RB(1) of the Parole Act 2002.

Spectrum of post sentencing restrictions to support offenders



Corrections interpretation of s107K(3)(bb)(ii) has consistently been that the same provider can deliver both the residential and programme conditions

47. The intention behind the 2014 Amendment Act was that if 24-hour monitoring was needed for more than 12 months, that this could only be pursued through a PPO rather than an ESO. Any condition to participate in a programme couldn't include requirements to be monitored for longer than necessary nor have the effect of 24-hour monitoring.

48. Corrections intended s107K(3)(bb)(ii) to enable the same provider to deliver both residential and programme conditions, provided each of these conditions are put in place separately and did not operate in practice as a de facto 24-hour residential programme. As outlined above any programme and residential conditions are intended to support the offenders through prosocial and purposeful activities with periods of free time throughout the day and into the evening to support them to live safely in the community. By having a single provider being able to provide both the programme and residence for the offender they are able to provide the continuity of support in a holistic way. Corrections has consistently interpreted the provision in line with that understanding.

The Parole Board has generally interpreted s107K(3)(bb)(ii) in line with Corrections' interpretation

49. The Chair of the Parole Board stated in 2022 that he found it difficult to see, as a matter of principle, why an offender could not live with a programme provider if both conditions – that is a residence condition and a programme condition – were the subject of separate consideration.[18]

50. Other members of the Parole Board also adopted this interpretation of the section.

This interpretation has been challenged in the courts resulting in a recent declaratory judgement that states that an offender can't be placed with the same provider for both their programme and residence conditions

51. In 2021, the High Court found that a special condition requiring an ESO offender to be in the care of Anglican Action and live at Kaainga Taupua was an unlawful arrangement and inconsistent with s107K(3)(bb)(ii).[19]

52. In light of this determination, the Parole Board, supported by Corrections, sought a declaration to confirm that it was lawful for ESO offenders to have their residential and

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[18] Affidavit of Sir Ronald Leslie Young dated 9 September 2022, in relation to 2023 High Court judgment *New Zealand Parole Board v Attorney-General* [2023] NZHC 1611, at [4].

[19] C v New Zealand Parole Board [2021] NZHC 2567.

programme conditions delivered by one provider.[20] They asked the High Court to confirm that:

> *"Section 107K(3)(bb) of the Act does not prevent the Board from imposing a special condition that enables the offender to reside with his or her programme provider at the programme provider's residence."*

53. However, the Court declined. Instead, on 27 June 2023 it determined that "s107K(3)(bb)(ii) of the Parole Act 2002 prevents the Board from imposing a special condition that requires or results in an offender residing with his or her programme providers".[21]

54. Essentially, this means that programmes need to be delivered at different places and by different people, to any residential conditions; therefore, all current programme conditions where the offender resides with the provider are unlawful. This means that programme activities are voluntary and the impacted conditions are unable to be enforced if the offender refuses to comply or does not attend their scheduled activities.

Long term implications and risks can be reviewed as part of the Government's response to the current Law Commission review of ESOs

55. There is an opportunity for a more systemic approach to the issues relating to the management of high-risk individuals in a consistent way as part of the Government's response to the Law Commission review of preventive detention and post-sentence orders (ESO and PPO).

56. This review will include (but not be limited to) consideration of:

    a. whether the laws reflect current understandings of reoffending risks and provide an appropriate level of public protection

    b. te Tiriti o Waitangi | the Treaty of Waitangi, ao Māori perspectives and any matters of particular concern to Māori

    c. consistency with domestic and international human rights law and

    d. the relationship between sentences of preventive detention, ESOs and PPOs.[22]

57. The Law Commission is due to provide their final recommendations in December 2024 with the Government response due within six months of the final report.

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[20] *Deputy Chief Executive of the Department of Corrections v McCorkindale* [2020] NZHC 2484.

[21] *New Zealand Parole Board v Attorney-General* [2023] NZHC 1611, at [104].

[22] Te Aka Matua o te Ture | Law Commission, Hapori whānui me te tangata mōrea nui: he arotake o te mauhere ārai hē me ngā ōta nō muri whakawhiu | Public safety and serious offenders: a review of preventive detention and post-sentence orders – Terms of Reference, issued 1 July 2022.

What is the policy problem or opportunity?

Problem: Current practice is contrary to the High Court's judgment, meaning the ESO programme conditions where the offender is residing with the provider are unlawful and are unable to be enforced.

58. As a consequence of this declaratory judgment by the High Court, Corrections cannot enforce the programme conditions of 26 high-risk offenders on an ESO that we manage who are residing with their programme provider. These offenders have a high-risk of violent and/or sexual offending which indicates they need a high level of holistic support and structure that a single provider can provide. This means that some of the current conditions are unable to be enforced which has implications for the wellbeing of affected offenders and consequently is a risk to public safety.

59. There are also a small number of offenders on an ESO without a programme condition who are exhibiting escalating risk who may benefit from the structure and support provided by a single provider. Following the judgment Corrections would not be able to seek a change to their conditions.

As a consequence of the judgment, the Parole Board is now bound to amend the affected conditions of the ESO, and may be required to remove the programme conditions

60. The Parole Board has indicated that there is now a need to review the impacted ESO conditions in response to the High Court's June 2023 judgment. It is likely that programme conditions that support the 26 offenders during the day will be removed.

61. In addition to these hearings, people subject to an ESO can request their conditions be reviewed at any time. If this should occur, the Parole Board would likely hear the application within two to three months of receipt. All of these offenders are also subject to electronic monitoring which is classed as a high-impact condition requiring a review under s107RB of the Parole Act, the next of these hearings is due to take place in late September 2023.

Programme conditions where the offender is residing with the provider are intended to support the offender's rehabilitation and reintegration which is put at jeopardy by no longer being lawful

62. The intention of these programme conditions is to support the rehabilitation and reintegration of the person into society via providing prosocial and purposeful daily activities. Without a form of supervision and structure that this programme provides to the lives of these complex individuals, there is the potential that the person may not be getting the best support they need to safely live in our communities. As mentioned above, there is benefit from having a single provider providing the holistic support for the offender that is lost by having separate providers delivering different aspects.

63. There are very few organisations that work with this cohort of people, particularly those with histories of child sexual offending. By limiting the options available to the Parole Board to place these individuals there is potential for poor outcomes for these people upon their release from prison or return to New Zealand. This could mean either a choice has to be made between a programme or a residential condition, or they are placed with a different provider for each condition which might not meet their needs, or in some cases there will be no available options for them due to their risk profile or individual circumstances.

Corrections' inability to enforce programme conditions presents risks to public safety

64. Corrections cannot prosecute breaches of unlawful conditions, and so following the High Court's judgment it is not able to enforce the day-time programme conditions of

26 high-risk offenders on an ESO. If someone was to breach their programme condition, then Corrections would be unable to hold the offender to account via a prosecution for a breach of that condition. This gives rise to significant risks to public safety given the serious nature of these individuals offending history and characteristics.

65. There is also a risk that knowledge amongst individuals on the ESO about the unenforceability of these conditions may give rise to non-compliance with programme conditions. This also has wider impacts on the trust and confidence in the effectiveness of the criminal justice system, in particular for the victims of these offenders.

66. We consider that it is essential for public safety and the rehabilitation and reintegration of these offenders to continue to be managed with residential and programme conditions in place.

The Law Commission has recognised the desirability of having the same provider for both the programme and residential conditions

67. In their recent issues paper released prior to the High Court declaratory judgment, the Law Commission discussed the potential legislative ambiguity around s107K(3)(bb)(ii). They acknowledged the yet to be completed proceedings, and it was their preliminary view that if the court found that there needed to be separation of providers then this would be "undesirable because the regimes should provide for effective rehabilitation. We understand that residential programmes have advantages over non-residential programmes in this respect. They are more intensive and structured than non-residential programmes. They reduce recidivism and help with mental health, relationship development and interpersonal competence."[23]

What objectives are sought in relation to the policy problem?

68. Our objective is to ensure that the day-to-day management of people subject to an ESO safely supports offenders' reintegration into society while balancing their rights with the risks to public safety.

[23] Te Aka Matua o te Ture | Law Commission, Public safety and serious offenders: a review of preventive detention and post-sentence orders, NZLC IP51, 31 May 2023, at 10.116, p 162.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

70. We have assessed all of the options in this RIS against four criteria:

Contributes to safety of victims and the public	The extent to which the option contributes to public safety and confidence in the justice system, including through reduced risks of reoffending, the safe management of offenders, and their reintegration into society.
Complies with human rights obligations	The extent to which the option supports the rights contained in NZBORA, the Human Rights Act, the Privacy Act, the Tokyo Rules and other international obligations. In particular, options must also not amount to arbitrary detention through de facto 24-hour monitoring.
Supports oranga/wellbeing of the people we manage	The extent to which the option will support the oranga/wellbeing of offenders, including greater opportunities to participate in activities that support them to develop prosocial behaviours, and will have a positive impact on their mental health and wellbeing.
Practical to implement	Implementation is feasible and practical, and the extent to which the options will not unduly disrupt service delivery or have significant fiscal implications, especially for contracted providers and the people they work with.

71. Note due to the urgency of which this analysis was undertaken, there was not adequate time to undertake, and give due consideration to, a Te Tiriti o Waitangi | Treaty of Waitangi analysis of the options.

72. Our options have been analysed against the criteria using the following scoring method:

Key for qualitative judgements:	
++	much better than the counterfactual
+	better than the counterfactual
0	about the same as the counterfactual
-	worse than the counterfactual
- -	much worse than the counterfactual

What scope will options be considered within?

73. Given the High Court judgement has found the interpretation of s107K(3)(bb)(ii) relied on by Corrections and the Parole Board to be unlawful, the scope of this regulatory impact assessment is confined to the management of high risk offenders on ESOs through the use of conditions that require them to reside with their programme provider.

74. One option considered out of scope was to move all impacted people to either Kaainga Taupua, Te Korowai, or Toruatanga and update the terms of those contracts/staffing options to ensure compliance (a variation of Option Three below). But this was deemed to be unworkable and too disruptive on not only the offenders but those people who would need to be shifted from their current residence to make space for these offenders.

75. One of the proposed options is for legislative change to in effect make all current offenders on an ESO subject to a programme condition where they are residing with the provider by including a retrospectivity clause. It has not been possible in the timeframes to consider if it is appropriate for legislative amendments to address the legal and financial risks arising from claims for compensation from those previously managed on these conditions, which have now been found to have been unlawful. This would apply to offenders who were subject to these conditions between 2014 and 2023. This issue has therefore not been included in this analysis

76. Consideration will not be given to wider changes to the ESO regime which is currently under review by the Law Commission, which includes programme conditions within scope, which is due to report back with final recommendations at the end of 2024.

What options are being considered?

Problem: Current practice is contrary to the High Court's judgment, meaning the ESO programme conditions where the offender is residing with the provider are unlawful and are unable to be enforced

Option One – Counterfactual

77. In this option the Parole Board would conduct hearings for each of the affected offenders (currently 26) to amend the conditions of their ESO. It is likely that in the interim each of the programme conditions would be removed assuming Corrections was unable to find a suitable alternative due to a lack of providers who can work with this cohort of individuals.

78. Beyond this current cohort of offenders, any people whom we would seek to have similar conditions imposed in the future would need to have alternative arrangements considered to manage their risk and to best support their rehabilitation and reintegration. This option would only likely be in place until any new legislative provisions are put in place following the Law Commission review, currently anticipated to be enacted in 2027.

Option Two – Legislative change

79. Under this option, the Parole Act would be amended to clearly enable an offender on an ESO to be required to reside with the same service provider that delivers any programme conditions. This amendment would essentially allow the status quo to lawfully continue by either removing or amending section s107K(3)(bb)(ii) in the Parole Act. This may require the inclusion of a definition of "programme conditions" in order to avoid further ambiguity.

80. Additionally, to mitigate a further intrusion into s26(2) of the BORA, it is proposed that the drafting of an amendment clarify that programme conditions must not have the effect of subjecting the offender to an at all times 24-hour residential restriction, and must be reviewed every two years.

81. As the High Court judgment provides a declaration as to the interpretation of s107K(3)(bb)(ii), this interpretation applies to not only all current and future conditions, but also for all past conditions. Therefore, any legislative amendment will require a retrospectivity clause to ensure that the programme conditions would be lawful for all people on ESOs now, irrespective of whether their conditions came into force before or after the amendment was enacted. Such an amendment best minimises the risk to public safety from current ESOs and supports them to retain their current support networks. This is comparable to other situations where senior court judgments have triggered urgent legislative actions by changing the Crown's legal risks in respect to a group of people.[24]

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[24] See for example the New Zealand Public Health and Disability Amendment Act 2013, passed in response to *Ministry of Health v Atkinson* [2012] 3 NZLR 456 (CA); and the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021, passed in response to *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2.

Option Three – Corrections enables operational and physical separation of programme and residential providers

82. One option is changing our current arrangements to separate out programme and residential providers operationally and physically. This will look different depending on if the provider is an externally contracted organisation or internally delivered by Corrections.

83. For external providers we would need to renegotiate all our contracts to separate out the housing and programme services. A second suitably qualified provider, assuming the original provider was willing to vary their contract to only provide one aspect of their service, for either the housing or the programme aspects will need to be procured and programmes will need to be delivered at a different site from where they reside.

84. This would result in two separate contracts for each provider – one for those on ESO with a programme and residential condition, and one for other people managed by Corrections such as those on other ESO conditions or parole conditions. Corrections would expect additional costs associated with having to manage additional contracts and providers.

85. For the internally Corrections-run services this would require a change proposal that would disestablish the positions of approximately 15 FTE positions at each of the two sites in order to split the residential aspects from the programme side of the operation. This would require consultation and change management with affected staff. The cost of contracting another agency would be higher than for the current internal staffing model.

86. As is the case with the externally provided services there would need to be a second suitably qualified provider for either the housing or the programme aspects procured, and programmes will need to be delivered at a different site from the houses on prison land where they reside.

87. For both the external provider model and internally delivered model each offender will need to have the impacted programme conditions of their ESO amended by the Parole Board.

88. There will also need to be a number of changes to operational practice for the current provider, the new provider, and Corrections to effectively manage the transition from the single service model to a dual service model.

89. In both cases additional funding would be required to have new contracts set up. This is assuming new providers can be found and existing contracts are able to be renegotiated. The potential costs are hard to quantify given the many variables at play. Contract negotiations with service providers would need to occur and additional locations for programmes, as well as transportation, would be needed. As the impacted ESOs are spread across six locations, we would have to double the number of locations if we were to achieve physical separation of residential and programme conditions. 9(2)(b)(ii)

How do the options compare to the status quo/counterfactual?

	Option One – Counterfactual	Option Two – Legislative change	Option Three – Operational and physical separation of programme and residential providers
Contributes to public safety	0 By amending current conditions for offenders there is a chance that offenders will not be well supported during their reintegration and rehabilitation, as it is difficult to find suitable providers to work with this cohort of people thereby impacting public safety.	+ Would confirm the current practice in managing these offenders which includes providing structured, prosocial, and purposeful daily activities, reducing the risk of reoffending.	- By having separate providers delivering the residential and programme conditions this may not best support the reintegration and rehabilitation of offenders given the difficulty finding suitable providers to work with this cohort of people, thereby impacting public safety.
Complies with human rights obligations	0 The ESO regime is inconsistent with BORA (double jeopardy), as is currently the case.	0 The ESO regime is inconsistent with BORA (double jeopardy), as is currently the case. Includes a retrospectivity clause. Engages the right to not be arbitrarily detained were the programme condition to be found to have the effect of 24-hour residential restriction but this option will include a mitigation against this.	- The ESO regime is inconsistent with BORA (double jeopardy), as is currently the case. While the separation of providers could be seen as a protection against arbitrary detention, there is a risk of arbitrary detention if the combined effect of conditions covering a 24-hour period.
Supports oranga/wellbeing of the people we manage	0 By removing programme conditions for offenders, the result may be that they do not have the best set of conditions to adequately support their oranga/wellbeing. There is a risk that changes in staffing and/or residence could destabilise the offenders. Offenders may now have greater individual choice and agency about how to structure their day, thereby improving their own perceptions of oranga/wellbeing. Conversely, their oranga may be impacted where they are not receiving the support they need to manage their reintegration.	+ Would confirm the current practice of having the conditions for these offenders that best suits their oranga/wellbeing by providing structured, prosocial, and purposeful daily activities. Overall, oranga/wellbeing likely to be positively impacted compared to Option One given the holistic support provided by a single provider.	- By having separate providers delivering the residential and programme conditions this may not best support the oranga/wellbeing of the offenders given the benefits of a holistic approach, and the difficulty finding accommodation and suitable providers to work with this cohort of people.
Practical to implement	0 The process of amending an offender's conditions is well established. However, this may take some months. Finding housing and new providers to work with this cohort of individuals is very difficult.	0 This option would confirm that current conditions are lawful and therefore there would be no substantive change in current practice. A small number of offenders may need adjustments to their existing conditions to ensure compliance with the new provision of conditions not having the effect of 24-hour residential restrictions. Two-yearly reviews are not difficult to implement as it would replicate the current practice under s107RB of the Parole Act for high-impact conditions.	-- Finding housing and new providers to work with this cohort of individuals is very difficult. May result in operational challenges and boundary issues resulting from different providers aligning the management of one individual across a significant part of the day. Would result in additional costs resulting from implementing new contracts with existing providers and procuring new service providers for either the programme or residential aspects of service delivery.
Overall assessment	0 This option does not best support public safety, or the oranga/wellbeing of the person given they may not have the best mix of conditions and providers to support their rehabilitation and reintegration.	+ Best supports offenders oranga/wellbeing and overall public safety by making current conditions and practice lawful in relation to having a single provider proving both the programme and residential services. Although small operational changes required this option is still overall practical to implement. (Recommended option)	-- This option would negatively impact the oranga/wellbeing of offenders and public safety overall and is not practical to implement.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Legislative change (Option Two) is the recommended option as it best supports offenders oranga/wellbeing and overall public safety by making current conditions and practice lawful

90. Legislative change proposed under Option Two is the best option to meet the objective of ensuring the day-to-day management of people subject to ESOs safely supports offenders reintegrate into society while balancing the persons rights with the risks to public safety.

91. The people that become subject to an ESO with residential and programme conditions that require or result in them being placed with the same provider pose some of the highest risk to public safety. The combined use of these conditions alongside experienced service providers can support offenders to engage in purposeful activities that contribute to the reduction in reoffending and thereby enhancing public safety.

92. This combination of conditions with a single provider can also help to maintain their wellbeing through providing them with structure and connections as they learn the skills to safely undertake everyday tasks such as shopping or being in public spaces. Together, this approach is a significant mechanism for ensuring that their risk of re-offending is minimised.

93. The proposal to clarify that programme conditions must not have the effect of a 24-hour residential restriction will also go some way to addressing the concerns raised by the Human Rights Commission that a single agency should not have the effect of detention through controlling a person 24-hours a day.

94. Legislative change is also the option that is the most practical to implement as it is effectively making current practice lawful.

Options One and Three are not recommended as they would have an overall negative impact on public safety and the wellbeing/oranga of offenders, and are not practical to implement

95. The remainder of the options are not recommended as there are very few service providers who have the expertise to work with this cohort of people with complex needs. Reducing the number of options available to support the rehabilitation and reintegration of these offenders, and the disruption associated with the need to move between different providers, will have flow on negative consequences for public safety and the person's oranga/wellbeing.

96. This challenge also exists for housing, and those with histories of sexual offending, particularly against children, are the most difficult to find suitable accommodation for. By further reducing the housing options this may result in the increased need to use shared accommodation placements such as boarding houses or lodges which also house vulnerable people and children, as there is no available funding for private rental options.

97. There is also a risk that providers may not be willing to renegotiate their contracts that could significantly impact the services that they currently provide thereby risking the ongoing viability of the existing relationship and service provision.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Offenders on ESO subject to programme and residence conditions	No costs for offenders given the impact of this change would in effect confirm the previous status quo.	Low	Low
Department of Corrections	Low costs for Corrections given the impact of this change would in effect confirm the status quo. Some impact for probation officers associated with providing information to the Parole Board for the two-yearly reviews of conditions.	Low	Low
Parole Board	Low costs for the Parole Board given the impact of this change would in effect confirm the status quo and would not require hearings to change current conditions for most offenders. Would require some hearing time devoted to the two-yearly reviews of conditions. Costs and impact are expected to be minimal as all offenders are currently subject to two-yearly reviews of their high-impact condition of electronic monitoring and reviews could happen concurrently.	Low	Low
Service providers	No costs for service providers given the impact of this change would in effect confirm the status quo.	Low	Low
Victims	No costs for victims given the impact of this change would in effect confirm the status quo.	Low	Low
Wider public	No costs for the wider public given the impact of this change would in effect confirm the status quo.	Low	Low
Total monetised costs	None	Low	Low
Non-monetised costs		*Low*	*Low*
Additional benefits of the preferred option compared to taking no action			
Offenders on ESO subject to programme and residence conditions	High risk offenders will continue to have their programme and residence conditions delivered by the providers that best supports their rehabilitation and reintegration.	Medium	Low
Department of Corrections	Will continue to have the full range of options available to safely manage and support high-risk offenders on an ESO. The legal and reputational risks associated with no action are also mitigated.	High	Low

Parole Board	Will continue to have the full range of options available when setting conditions for high-risk offenders on an ESO. The legal and reputational risks associated with no action are also mitigated.	High	Low
Service providers	There will be no disruption to their service delivery or contractual arrangements with the Corrections. The legal and reputational risks associated with no action are also mitigated.	High	Low
Victims	Will continue to have confidence that the person who offended against them is being managed safely and supported in their rehabilitation and reintegration.	Medium	Low
Wider public	Will continue to have confidence that the high-risk sexual and violent offenders subject to an ESO are being managed safely and supported in their rehabilitation and reintegration.	Low	Low
Total monetised benefits			
Non-monetised benefits		*Medium*	Low

98. As the preferred option is effectively legislating to enable current practice to continue for high-risk offenders on an ESO with both a programme and residence condition can continue to be supported by the same provider, there are minimal costs to all parties.

99. Without the legislative change the current programme conditions are unlawful which means Corrections, the Parole Board are currently carrying some legal, fiscal and reputational risks. By changing the legislation as Option Two recommends this risk is mitigated.

100. Legislating to ensure the programme and residence conditions can be provided by the same service provider will also benefit all parties as there will continue to be the full suite of options available to place these high-risk offenders when on an ESO.

Section 3: Delivering an option

How will the new arrangements be implemented?

101. As legislative change would effectively amend the current law to confirm the status quo there would be minimal change to current practice required.

102. Once the legislative amendment was in place, Corrections will update any operational guidance as required and notify the Parole Board and contracted providers of the new provisions.

103. These provisions may impact one offender whom Corrections is managing on a regime that at times amounts to 24-hour support to manage this person's extreme risk of reoffending. Corrections staff are considering options to move the person to a different pattern of programme conditions that enables more unstructured time or whether a PPO is necessary in these circumstances. We recognise that longer-term work is required to address the interplay between the ESO and PPO regimes but anticipate that the proposed amendments will reinforce the distinction between an ESO and PPO.

104. There are also a small number of offenders whose conditions are worded in such a way that may not comply with a new requirement that the condition does not have the effect of 24-hour monitoring but are in practice have free-time unsupervised throughout the day. Corrections will review these offenders' conditions to ensure compliance with the new provisions and seek a variation of conditions through the Parole Board as appropriate.

How will the new arrangements be monitored, evaluated, and reviewed?

105. Corrections will continue to monitor offenders who are subject to these conditions to ensure the conditions are still supporting the people in their rehabilitation and reintegration. If there are any conditions that are no longer needed to support the objectives outlined in s15(2) of the Parole Act, Corrections will seek a review by the Parole Board to vary those conditions in accordance with s107O of the Parole Act.

106. Over the longer term, the ESO regime is currently under review by the Law Commission which includes the use of special conditions. The Commission is due to report back with their final recommendations before the end of 2024. The Government will have six months to respond to those recommendations which will likely result in significant changes to the ESO regime for high-risk offenders.

Appendix One: Examples of residential restrictions and residential conditions

Residential restrictions can contain wording along the lines of the below examples:

- Full "at-all-times" residential restrictions (available only for 12 months for ESOs):

  To comply with the requirements of full residential restrictions. You must be at [specified address] at all times unless:

  i. *To seek urgent medical or dental treatment*
  ii. *To avoid or minimise a serious risk of death or injury to you or any other person*
  iii. *For humanitarian reasons approved by a probation officer, or*
  iv. *You have the prior written approval of a probation officer.*

  Upon expiry of the residential restrictions condition, you must reside at an address approved in writing by a Probation Officer.

OR

- Partial "at times specified" residential restrictions (available for the entirety of an ESO):

  To comply with the requirements of partial residential restrictions. You must be at [specified address] between the hours of [00:00am/pm] and [00:00am/pm] daily unless:

  i. *To seek urgent medical or dental treatment*
  ii. *To avoid or minimise a serious risk of death or injury to you or any other person*
  iii. *For humanitarian reasons approved by a probation officer, or*
  iv. *You have the prior written approval of a probation officer.*

  Upon expiry of the residential restrictions condition, you must reside at an address approved in writing by a Probation Officer.

Residential conditions can contain wording along the lines of the below examples:

- *To reside at an address approved in writing by your Probation Officer, and not move from that address unless you have the prior written approval of your Probation Officer,*

OR

- *To reside at [stated address, which is the address of a residence provider], or any other address approved in writing by a Probation Officer, and not move from that address unless you have the prior written approval of a Probation Officer.*

Appendix Two: Three examples of programme conditions in place for current ESOs

Example one of a weekly programme for a person on an ESO staying at S 9(2)(a) and subject to a programme condition.

The Programme condition, a special Condition of the ESO imposed by the Parole board, states that the individual is:

> "To undertake, engage in and complete a reintegration programme administered by a programme provider for up to nine hours daily, between the hours of 8 am and 8 pm daily, as approved by a probation officer and abide by the rules of the programme to the satisfaction of the Probation Officer."

> "To allow an approved person to facilitate and assist you as necessary to ensure your attendance at classes or participating in other activities associated with the programme."

S 9(2)(a)

Example two of a weekly 10 hour programme for someone on an ESO who is staying S 9(2)(a)

The Programme condition, a special Condition of the ESO imposed by the Parole Board, states that the individual is to:

> "For up to 10 hours per week, to engage in a reintegration programme provided by an approved provider to the satisfaction of a Probation Officer"

S 9(2)(a)

Example three of a weekly programme for a person on an ESO who is staying at S 9(2)(a) and subject to a programme condition.

The Programme condition, a special Condition of the ESO imposed by the Parole Board, states that the individual is to:

> "For up to 8 hours per day, between the hours of 8:00am and 6:00pm daily, to participate in a reintegration programme, approved by your Probation Officer and administered by an approved agency."
>
> "To allow an approved person to supervise or monitor you, for no longer than is necessary, to ensure your attendance at classes or participation in other activities associated with the programme.'

S 9(2)(a)

Appendix Three: Two case studies of ESO offenders with both a programme and a residence condition