

<b>Title:</b> <b>Criminal Justice and Courts Bill</b> <b>IA No: MoJ001/14</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> NA	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 18/06/2014
	<b>Stage:</b> Introduction of Legislation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> general.queries@justice.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion: NA</b>

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, Two-Out?	Measure qualifies as	
Unknown	n/a	n/a	No	n/a	
<b>What is the problem under consideration? Why is government intervention necessary?</b> <p>Whilst there have been considerable improvements in the Criminal Justice System (CJS) in recent years, there is room for further reform. Re-offending rates remain high and there is an ongoing need to ensure offenders are properly punished and the public protected. Re-offending is particularly high for young offenders leaving custody. In addition, offenders do not currently bear the costs of their court cases, thus placing a burden on tax payers. The Government also believes that there are unnecessary delays in the judicial review system and too many unmeritorious cases. In addition to a risk that increased use of the internet could impact negatively on trial by jury and prevent fair trials. Further details can be found in individual impact assessments on why intervention is necessary.</p>					

<b>What are the policy objectives and the intended effects?</b> <ul style="list-style-type: none"> <li>• Deliver a firm but fair package of sentencing and criminal law reforms that properly punish serious and repeat offenders and better protect victims and the public. People who break the law will not escape the law.</li> <li>• Reduce the burden on hardworking taxpayers of funding the courts.</li> <li>• Put education at the heart of youth custody, giving young offenders the tools they need to turn their backs on crime.</li> <li>• Modernise the law on juries, the cornerstone of the Criminal Justice System.</li> </ul>
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<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> Option 1: Do nothing, retain the current position Option 2: Introduce the Criminal Justice and Courts Bill  Option 2 is the preferred option as the Government believes this will increase public protection, punish offenders and deliver a more efficient CJS in a way that represents value for money to the tax payer. It is not possible to provide a net present value for the entire Bill as the full impact of the provisions will not be felt for up to 20 years and it is not possible to provide costs over such a long horizon. It has also not proved possible to fully quantify costs for all of the provisions. Any total figure provided would risk being highly misleading.
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<b>Will the policy be reviewed? It will be reviewed. If applicable, set review date: 3-5 years after implementation</b>	
Does implementation go beyond minimum EU requirements?	NA

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA	<b>Non-traded:</b> NA	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister



Date: 18/06/2014

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduction CJC Bill.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Unknown	High: Unknown	Best Estimate: Unknown
2013/14	2013/14	NA			

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

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

Monetised costs, where available, are detailed in individual impact assessments. The Bill's costs will mainly impact on the public sector - primarily the police, Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunal Services (HMCTS), the Legal Aid Agency (LAA) and the National Offender Management Service (NOMS).

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

A number of public bodies will be required to make administrative changes in relation to provisions in the Bill, particularly HMCTS. These non-monetised costs are also detailed in individual impact assessments.

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

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

Full details of the key monetised benefits are detailed in individual impact assessments. In particular, there will be benefits to HMCTS from removing high volume, low level 'regulatory cases' from traditional magistrates' courtrooms and from charging convicted offenders. These provisions will benefit taxpayers by offering better value for money. There will also be benefits to the youth secure estate with the introduction of Secure Colleges.

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

Full details of the key non-monetised benefits are detailed in individual impact assessments. The sentencing and youth provision have the potential to improve public protection and reduce re-offending rates within communities. The judicial review changes have the potential to result in quicker resolution of cases and reduced costs to litigants and HMCTS.

There is also the potential for reduced social costs associated with re-offending behaviour. This is because crime imposes costs on society; notably the physical, emotional and financial impact on victims.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	NA
The above monetised and non-monetised costs and benefits are based on the key assumptions outlined in the individual impact assessments which contain a breakdown of the risks and benefits in further detail.		

## BUSINESS ASSESSMENT (Option 1)

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

# Evidence Base (for summary sheets)

## Problem under consideration

1. The Criminal Justice and Courts Bill will make significant and wide ranging reforms to the justice system as well as targeted provisions to improve public protection and reduce re-offending. The judicial review, youth and juror provisions follow extensive public consultation, and the criminal justice reforms have been subject to detailed policy development, consulting key CJS partners where appropriate.
2. This overarching impact assessment has been developed to provide an overview of the main provisions of the Bill. Individual impact assessments have been produced for the majority of the provisions in the Bill and contain more detail on the costs and benefits of specific provisions. Some provisions (as indicated below) have little or minor impact and therefore, in line with standard practice, we have not published an impact assessment.

## Rationale for intervention

3. Whilst there have been considerable improvements in the Criminal Justice System (CJS) in recent years, there is room for further reform. Re-offending rates remain high and there is an ongoing need to ensure offenders are properly punished and the public is protected. Re-offending is particularly high for young offenders leaving custody. In addition, offenders do not currently bear the costs of their court cases, thus placing a burden on tax payers. The Government also believes that there are unnecessary delays in the judicial review system and too many unmeritorious cases proceed further than they should, requiring too much court resource to arrive at a final determination. This can delay important projects and initiatives. The Government also believes there is a risk that increased use of the internet could impact negatively on trial by jury and prevent fair trials.

## Policy objective

4. The aims of this Bill are to:
  - Deliver a firm but fair package of sentencing and criminal law reforms that properly punish serious and repeat offenders and better protect victims and the public, people who break the law will not escape the law. This will include provisions about the giving of cautions; sentencing and the release and recall of offenders; and the electronic monitoring of offenders released on licence. It will also contain a provision for the offence of possessing extreme pornography and will create a statutory offence of police corruption.
  - Reduce the burden on hardworking taxpayers of the courts by removing low-level 'regulatory' cases from traditional magistrates' courtrooms in certain circumstances: making provisions for the recovery of the costs of the criminal courts from offenders; providing for the circumstances in which the High Court and the Upper Tribunal may refuse relief in judicial review proceedings and funding and costs in relation to such proceedings.
  - Put education at the heart of youth custody, giving young offenders the tools they need to turn their backs on crime. The Bill will make provisions for the detention of young offenders, giving cautions and conditional cautions to youths and referral orders.
  - Modernise the law on juries, the cornerstone of the CJS. The Government will clarify powers to tackle the influence of the internet on trials by jury to ensure that defendants receive a fair trial. We will also increase the upper age limit for jurors from 70 to 75 and so harness the knowledge and life experiences of a group of people who can offer significant benefits to the court process.

## **Description of options considered**

### **Option 0: Do nothing**

5. Under this option the CJC Bill would not be introduced and current legislation would continue. This has been rejected as it would not address the objectives identified above.

### **Option 1: Introduction of CJC Bill**

6. The Bill will achieve the above listed priorities through the following provisions. A full summary including costs, benefits and key assumptions for all of the policies can be found at table 1 below.

#### **Restrictions of the use of simple cautions**

7. These provisions are intended to prevent the use of simple cautions for indictable only and certain serious triable either way offences specified in secondary legislation (e.g. possession of an offensive weapon, child prostitution and pornography or procuring or supplying Class A drugs), apart from in exceptional circumstances and where a senior police officer, as well as the CPS for the indictable only cases, has agreed that a simple caution can be administered. The provisions also prevent the use of simple cautions where offenders have received a conviction or caution for a similar either way or summary only offence in the last two years, again, unless there are exceptional circumstances. The policy will not apply in relation to conditional cautions, youth cautions or youth conditional cautions.
8. Key costs - It is not possible to estimate the exact financial impact of this policy due to the considerable uncertainty around potential sentencing decisions of the police and CPS. However, we do not expect the overall costs to exceed £10m per year<sup>1</sup> from 2015/16<sup>2</sup>.
9. Key benefits - The proposals to restrict the use of cautions are intended to ensure that the public have a greater level of confidence in cautions; that the police have a clear understanding of the offences for which they should not be used; and that Police and Crime Commissioners can better hold their forces to account for the use of cautions.

#### **Changes to the framework for the sentencing and release of serious and dangerous sexual and violent offenders**

10. These changes are intended to ensure that the most serious offenders, and all dangerous offenders serving an Extended Determinate Sentence (EDS), are subject to early release only at the discretion of the Parole Board. The addition of terrorism and offences that may be charged in serious terrorism cases to Schedule 15B of the Criminal Justice Act 2003, and the increase in some maximum penalties to life imprisonment is to reflect the seriousness of modern terrorist offending. Public confidence should be increased if the most serious offenders can only be released early after Parole Board assessment. Offenders should also be encouraged to take responsibility for their rehabilitation.
11. Key costs - We estimate that these proposals will result in a steady state increase in the prison population of around 1,000 places, from 2030. It is not possible to estimate the prison costs at this point as we cannot be sure what the unit cost of a prison place will be by 2030. We estimate that there would be no increase in the prison population in this Spending Review period (ending March 2015); there would be an increase of less than 10 prison places in the next Spending Round period (ending March 2016); and that there would be an increase of around 300 prison places by March 2020.

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<sup>1</sup> All prices in this impact assessment are in 2013/14 prices

<sup>2</sup> All steady states are based on an assumption of commencement in 2015/16

12. We estimate that these proposals would result in a steady state increase of around 1,100 Parole Board hearings per year, again by 2030. We estimate that there would be no increase in Parole Board hearings in this Spending Review period (ending March 2015); there would be an increase of less than 50 hearings per year in the next Spending Round period (ending March 2016); and that there would be an increase of around 400 hearings per year by March 2020.
13. Key benefits - We expect benefits to society and, in particular, victims of crime through the introduction of a new framework for the most serious offending, which ensures that offenders are not released early unless the Parole Board believes it is appropriate to do so; thereby enhancing public confidence in the criminal justice system. There is potential benefit to offenders in that discretionary release should encourage them to take responsibility for their rehabilitation.

#### **Introduction of a new statutory test for release after recall of determinate sentence prisoners**

14. The new test is intended to deter offenders from repeatedly breaching their licence conditions, or wilfully refusing to submit to supervision, because they will know that if they do they face serving the remainder of their sentence in prison, rather than receiving short fixed term periods of recall. For those offenders who nevertheless continue to be persistently non-compliant, they can continue to be detained and will not be released by the Parole Board before the end of their sentence unless the Board is satisfied that they are not highly likely to continue to commit further breaches of their licence if they were to be released.
15. Key costs - It is estimated that this policy will have a steady state impact on an additional 75 offenders per year and require up to an additional 50 prison places at a cost of around £1.5m per annum from 2015/16.
16. Key benefits - This will increase the incentives on offenders to remain compliant with their licence conditions and will ensure that those who do not are returned to custody and are only released before the end of their sentence at the discretion of the Secretary of State or the Parole Board, if satisfied that they are not highly likely to commit further licence breaches if released.

#### **New offence for offenders unlawfully at large following recall (UAL) and increase of maximum sentence for offenders who fail to return from release on temporary licence (ROTL)**

17. The new offence is intended to deter offenders who remain unlawfully at large after recall from licence from failing to return to custody and ensure that those who deliberately seek to avoid serving the remainder of their sentence can be properly punished once they are returned to custody.
18. Increasing the maximum sentence for offenders who fail to return to custody from release on temporary licence (ROTL) is intended to further deter offenders from failing to return from release on ROTL as failure to return undermines the criminal justice system. We want to send a strong message that failure to return from ROTL is unacceptable and warrants a significant custodial sentence. This will also give sentencers greater discretion to impose longer sentences where offenders abuse the privilege of ROTL by failing to return.
19. Key costs - The creation of a new offence for 'being unlawfully at large following recall to custody' is likely to result in costs to HMCTS, Crown Prosecution Service and the Legal Aid Agency, as offenders will be prosecuted for this offence. Additionally, we expect the change to the Prisoners (Return to Custody) Act 1995 offence of 'failure to return while on temporary licence (ROTL)', increasing the maximum sentence from 6 months to 2 years, to lead to increased CJS costs as this offence will now be triable either way. Although the increase in NOMS costs is expected to be relatively small, overall steady state annual costs to the CJS are estimated to be around £200k from 2015/16. It is difficult to estimate the precise impact because of a number of variables which include the significant discretion to the judge sentencing the case and the fact that the impact will differ depending on the individual circumstances of each case – including sentence length. However, we expect the new offence and its maximum penalty of 2 years to have a punitive impact on some of those who commit the most serious UAL offences. We have not quantified additional NOMS costs generated by the increase in the maximum custodial sentence for the ROTL offence.

20. Key benefits - The new offence for being unlawfully at large following recall to custody will mean that offenders, if given a custodial sentence, will not be considered by the Parole Board for release from the original sentence until they have served the custodial period of the new sentence. This is most likely to significantly affect those who were already close to their sentence expiry date at the point that their licence was revoked as it is more likely that in those cases the new sentence will extend beyond the end of the recall period. In addition to greater sentencing powers to punish offenders UAL and those who fail to return from ROTL, there may be a deterrent effect which may result in a reduction of offenders remaining UAL and failing to return from ROTL.
21. The new offence will in addition create a punitive measure for offenders who remain UAL after recall from licence as currently 'being unlawfully at large following recall' is not a separate offence and offenders can only be required to serve the outstanding part of the original sentence in custody.

### **Electronic monitoring of whereabouts as a compulsory licence condition**

22. This provision will deter offenders from re-offending following release from custody by introducing Electronic Location Monitoring (ELM) as a compulsory licence condition. It will also provide additional public and victim protection, by enabling known offenders to be monitored following their release from custody, and to enforce more robustly other licence conditions such as exclusion zones.
23. Key costs - It is not possible at this stage to provide the costs associated with ELM hardware and service provision, due to the ongoing process of procuring the equipment and associated services from private sector providers.
24. Key benefits - The key benefits are the potential for a reduction in re-offending and an increased efficiency of law enforcement agencies (due to increased ability to detect crime).

### **Extending the starting point for the murder of a police or prison officer to a whole life order**

25. This provision will increase the starting point for determining the minimum term for a life sentence for the murder of a police or prison officer in the course of their duty, from 30 years to a whole life order. This will apply where the offender is 21 or over at the time of the offence. The increase will not necessarily mean that all cases will result in a whole life order as the courts must still take into account all the circumstances of the case. This provision reflects the grave seriousness of these offences.
26. Key costs - Anticipated costs are small. Whilst we do not routinely collect data on the victims of homicide there are only a very small number of relevant offences – on average less than one per year. They currently attract long minimum terms and many are likely to be greater than the 30 year starting point.
27. Any additional prison places would start to accrue only after around 30 years and would reach a steady state when the death rate of such prisoners balances inflow. There may be some offsetting of costs, as these offenders would otherwise have been subject to licence conditions for life following release from custody.
28. Key benefits - This policy sends a clear message that the murder of a police or prison officer in the course of their duty is among the most serious offences and that offenders will face the most severe sentence available.

*This provision has a relatively minor impact and therefore a full Impact Assessment is not deemed necessary.*

## **Extension to the extreme pornography possession offence at section 63 Criminal Justice & Immigration Act 2008**

29. This provision will criminalise the possession of extreme pornographic images depicting rape and/or non-consensual penetrative sexual conduct through an extension to the existing criminal offence at section 63 of the Criminal Justice and Immigration Act 2008. This prohibited conduct will be subject to a 3 year maximum prison sentence.
30. **Key costs** - It is difficult to estimate the number of cases that will be impacted however the estimated cost per case is up to around £10K. Each additional case is estimated to cost the Crown Prosecution Service approximately between £800 and £2,300 and Her Majesty's Courts and Tribunal Service £850. Costs to the Legal Aid Agency, Prisons and Probation Service have been estimated at approximately £2,700, £2,200 and £1,800 per case respectively.
31. **Key benefits** - The amendment reflects the Government's commitment to reducing violence against women and aims to help address the concern that these images promote the sexual abuse of women. It will send out a clear message that extreme pornographic depictions of non-consensual sexual penetration are unacceptable and that the Government is committed to protecting women from violence. The extension of the offence would also bring it in line with existing provisions in Scotland.

## **Causing death or serious injury by driving when disqualified**

32. This provision amends the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 to create a separate offence of causing death by disqualified driving (increasing the penalty from two to 10 years' imprisonment) and to create a specific new provision criminalising disqualified drivers who cause serious injury (with a maximum penalty of four years' imprisonment).
33. **Key costs** - Overall we estimate increased steady state annual costs to the CJS to be in the region of £250,000 from 2018/19. The main impact on the criminal justice system will arise as a result of convicted offenders receiving longer sentences.
34. **Key benefits** - There may be a deterrent effect if disqualified drivers are deterred from flouting their driving bans. In addition, longer prison sentences could mean British roads are safer because there are fewer disqualified drivers driving on them.

## **Malicious Communication: Making the offence in section 1 of the Malicious Communications Act 1988 a triable either-way offence**

35. This provision amends section 1 of the Malicious Communications Act 1988 to make the offence of sending certain articles with intent to cause distress or anxiety an 'either-way offence', and increases the maximum penalty to two years imprisonment, or an unlimited fine, or both. The offence in section 1 is currently summary only. This means that: prosecutions can only be brought in the magistrates' courts; the maximum penalty for the offence is currently a fine of up to £5,000, or a custodial sentence of up to six months (or both); and that prosecutions for the offence must be brought within six months from the time it was committed. Making the offence either way would remove the six-month time limit and provide for a higher maximum penalty.
36. **Key costs** - Overall we estimate increased steady state annual costs to the CJS of up to around £2m from 2015/16. This includes an approximate £1m in additional costs to NOMS (including 20 prison places) per annum and £1m to the wider CJS (including the CPS, HMCTS and LAA).
37. **Key benefits** - The key benefit of the proposed changes to section 1 is better protection for those at risk of becoming victims of a section 1 offence, including vulnerable young people. Making this into an either-way offence under section 1 would allow more time for prosecutions to be brought and provide for a higher maximum penalty (of up to two years imprisonment). The increase to the maximum penalty may have a deterrent effect, which could in turn protect the public.



## **New criminal offence(s) of ill-treatment or wilful neglect**

38. At present, there is a gap in the statutory legislative framework relating to the offence of ill-treatment or wilful neglect of users of health or adult social care services. That offence currently exists only where a person lacks capacity under the Mental Capacity Act 2005, or is subject to the Mental Health Act 1983 and in relation to children in certain circumstances. These new statutory offences will ensure this 'gap' in the legislation is closed by ensuring cover for all relevant individuals, and providing consistency of approach in relation to ill-treatment and wilful neglect.
39. Key costs - With the Mental Capacity Act 2005 as a proxy, we estimate that in steady state there may be up to 240 cases a year under the proposed new offences, with an average total CJS cost estimate of £2.3m pa from 2018/19. There will also be police costs associated with investigations, however it has not been possible to quantify these costs.
40. Key benefits - The new offences will benefit individuals in receipt of health and adult social care services by ensuring they are equally protected from ill-treatment or wilful neglect. It will also ensure that those responsible for the worst failures in care can be held accountable. The associated sanctions may also act as a deterrent, reducing the number of incidents and leading to improved safety and quality of services for all. However it has not been possible to quantify these benefits.

## **Police Corruption**

41. In order that police officers can discharge their duties effectively, it vital that the public have confidence that the police will act honestly and in the public interest. Where officers fail to do so, they must be investigated and punished appropriately for any wrongdoing. The well-established police disciplinary system deals with minor wrongdoing but, in the most serious cases, including cases of corruption, only a criminal sanction can deliver the appropriate punishment.
42. The Bill introduces a new offence, which can be tried only on indictment, carrying a 14-year maximum prison sentence, aimed at addressing the corrupt use of the powers and privileges of police officers, for which only a criminal penalty is appropriate. It will also cover cases where an officer fails to act for corrupt reasons (e.g. where he knows that a suspect did not commit a particular crime but conceals that knowledge because of a corrupt relationship with the person who did commit the offence) or where an officer threatens to act, or not to act, for corrupt reasons.
43. Key costs - It is anticipated that this policy may lead to additional prosecutions with associated costs. The potential size of this increase is not known but it is not currently anticipated that there will be a significant number of additional prosecutions as a result of this provision.
44. Key benefits -The new offence may have a possible deterrent effect on police officers as the offence is more clearly linked to them and this may in turn lead to fewer incidences of police corruption. In addition, the new offence may increase public trust in the police as it is clearer that police corruption is being directly addressed.

## **Drug testing in Prison**

45. This provision expands the range of drugs that prisoners can be tested for under the existing Mandatory Drug Testing (MDT) programme. Currently under section 16A of the Prison Act 1952 prisoners can only be tested for drugs that are controlled under the Misuse of Drugs Act 1971 ("the 1971 Act"). This clause permits the Secretary of State to specify in prison rules and rules for other places of detention, non-controlled drugs which can be tested for under the existing MDT programme.
46. MDT aims to measure the extent to which prisoners misuse drugs, deter prisoners from misusing drugs through punishing those that test positive under the prison discipline system, and to identify those prisoners that may benefit from drug treatment through referring prisoners who test positive to drug treatment providers. MDT can only meet those aims if it tests prisoners for the drugs they most commonly misuse.

47. Key costs -The clause itself will impose no financial obligations on the public sector. It will make it possible for the Secretary of State to broaden the range of drugs that prisoners can be tested for but not require him to do so. Even where the Secretary of State specifies a particular non-controlled drug that could be tested for, that will not require prisons to then test for it; it will simply enable them to do so should they wish.
48. Key benefits -There has been a recent rise in the extent to which prisoners are misusing drugs which are not controlled under the Misuse of Drugs Act 1971 Act, such as prescription medicines and new psychoactive substances. As those drugs are not controlled they currently cannot be tested for under MDT and MDT is therefore not meeting its aims to the greatest possible extent. The provision will allow the Secretary of State to extend MDT to include these new substances and therefore increase its efficacy.

*This provision has a relatively minor impact and therefore a full Impact Assessment is not deemed necessary.*

### **Detention of Young Offenders**

49. This provision will enable the development of a new type of youth custodial provision, called Secure Colleges. These Secure Colleges will put education at the heart of detention, raise educational engagement and attainment in youth custody, contribute to reducing the high levels of re-offending of young people leaving custody, and reduce the overall cost of youth custody.
50. Key costs - We have not provided monetised estimates of costs and benefits as doing so would prejudice the effectiveness of a competition for the delivery of services. We estimate that a Secure College will achieve an operating cost significantly lower than the current average cost of a place in youth custody and will allow us to withdraw more expensive and inefficient existing custodial provision.
51. Key benefits - Should these reforms lead to reductions in re-offending of those young people held in custody, this has the potential to reduce the costs to Youth Offending Teams (YOTs) and probation services, to reduce court backlogs and to allow for savings to legal aid provision. In addition, the resultant reduction in crimes committed would lead to reduction in the harm caused to society from offending. There is also some evidence that improved education in custody is associated with increased earnings in the future for certain groups, and increased employability. Any improvements in employability of those released from custody would lead to significant wider economic benefits.

### **Youth Referral Orders and Cautions**

#### **Youth Referral Orders**

52. The youth referral order provisions are consequential changes to the Legal Aid, Sentencing and Punishment of Offenders Act that removed the restriction on repeated use of the referral order. This aligns with our policy of promoting use of the referral order, and the youth offender panel to whom an offender is referred, to deliver increased levels of restorative justice. To this end the Youth Justice Board (YJB) have provided funding to YOTs to train youth offender panel volunteers as restorative justice conference facilitators. The provisions in the CJC Bill make amendments to the existing legislation applying to where the offender breaches a referral order or is dealt with for further offences to remove the requirement to revoke the referral order and allow the court the discretion to allow it to continue. This is aimed at ensuring the continuation of a restorative justice approach within the framework of the referral order to enable the victim to complete the process. As such there is no expectation of increased costs. If anything it may reduce costs as the alternative to continuing an existing referral order is revocation and resentencing to the higher level youth rehabilitation order.

### Changes to youth caution and youth conditional caution to extend appropriate adult to 17 year olds.

53. We are amending the Crime and Disorder Act 1998 to ensure that 17 year olds are treated in the same way as those under 17 years of age when given a youth caution or a youth conditional caution by the police as an alternative to charging and prosecuting a child. Under current primary legislation there is no requirement for an "appropriate adult" to be present in the case of a 17 year old, although there is such a requirement for those aged 10 to 16 .
54. This amendment reflects recent changes to police practice recently brought into effect by the Home Office and is therefore unlikely to have an impact on resources. In response to the judgment *HC vs. (1) Secretary of State for the Home Department and (2) Commissioner of Police for the Metropolis* [2013] EWHC 982 (Admin), in October 2013 the Home Office amended the relevant Codes of Practice to the Police and Criminal Evidence (PACE) Act 1984 so that 17 year olds are afforded the same access to appropriate adults as 10-16 year olds when dealt with by the police.
55. This legislative measure therefore merely formalises a change in practice that has already been instituted by the Home Office and Association of Chief Police Officers following the judgment and will not have any new impact.

### Power to commit young offender to the Crown Court for sentence on summary conviction

56. This provision closes a gap in the powers of magistrates' courts by enabling them, on convicting a person under 18 of an offence, to commit him or her to the Crown Court for sentence in any case where the court is of the opinion that a Crown Court sentence is required, and not (as now) only where the defendant pleaded guilty at the outset or satisfies the criteria for an extended sentence.
57. Key costs - Although longer sentences – which would cost more – would be the likely result in cases where the new committal power is used, this provision will only be relevant in a limited number of cases.
58. Key benefits - The objective of the provision is to remove a possible disincentive to magistrates' courts accepting jurisdiction in cases involving serious offences. This will mean that some cases that are now tried in the Crown Court will be tried in youth courts instead, which is both more appropriate and less expensive.

*These provisions have a relatively minor impact and therefore full Impact Assessments are not deemed necessary.*

### Removing high-volume, low-level 'regulatory cases' in magistrates' courts

59. The Government intends to reform the process for hearing 'regulatory cases' to simplify it in certain circumstances; ensure it is proportionate to the seriousness of the offending and the consequences for the offender; and focus traditional magistrates' courtrooms on those cases, such as public disorder, shoplifting and antisocial behaviour, which have the biggest impact on local communities.
60. Key costs - Total costs are currently estimated to lie in the range of £3 – 14 million over 10 years in present value terms (equivalent to £1.7m per annum from 2016/17). This is split between transition costs and ongoing costs.
61. Key benefits - Principal monetised annual benefits are based on the potential for increased efficiency as a result of reduced bureaucracy associated with removal of unnecessary statutory processes steps in relation to these cases. The total benefits are currently estimated to lie in the range of £49 – 67 million over 10 years in present value terms (equivalent to £11.6m per annum from 2016/17).

## **Criminal Courts Charging**

62. The Government is looking at new ways to fund the Criminal Justice System and reduce the burden on the taxpayer in England and Wales. This provision will ensure that adults who break the law and are dealt with by a criminal court contribute towards its costs. The criminal courts charge will be collected after other existing financial impositions have been paid (that is, compensation, the Victim Surcharge, prosecution costs and fines). The provisions also enable fines officers to vary repayment rates after the point of default and increase an offender's payment rate, at any time, with the consent of the offender.
63. Key costs - There will be costs imposed in meeting the additional demand in addition to existing enforcement costs. It is estimated that the total cost of transitioning to and maintaining a service that includes enforcing the criminal courts charge is £20m per year from 2015/16 (in addition to costs of enforcement of current financial impositions). Additionally, it is anticipated that offenders who willfully refuse or culpably neglect to pay the charge where they have the means to do so would face the sanction of committal to prison. This may lead to costs for HMPS/NOMS in terms of accommodating the offenders. However, as this sanction will be only used as a last course of action after all other means of pursuing payment have been exhausted, it is not expected that this cost will be substantial. It is estimated that the potential increase in prison occupancy resulting from this sanction could lead to a cost of around £5m per annum, also from 2015/16.
64. Key benefits - the potential cash inflows that could be realised from the imposition of a charge to recover court costs are estimated to be between £90-170m from 2019/20.

## **Second-tier Appeals Test for Scotland**

65. This provision will bring the test applied to applications for permission to appeal from the Upper Tribunal in Scotland into line with the test applied to such applications in England and Wales and Northern Ireland.

*This provision has a relatively minor impact and therefore a full Impact Assessment is not deemed necessary.*

## **Juror misconduct and strict liability contempt by publication**

66. Our policy objective is to ensure that the law and criminal procedures strike a balance between the public interest in the administration of justice, the defendant's right to a fair trial, the rights of publishers to freedom of expression and the rights of jurors. These provisions will make certain types of juror misconduct a criminal offence and reform the law on contempt by publication to regularise the position of publishers of material available to the public on the internet.
67. Key costs - The changes to the strict liability procedure will have minimal cost implications since cases are expected to be rare and would be administered by the Attorney General's Office.
68. The creation of the four new juror misconduct offences is unlikely to have an impact on costs, as the behaviour subject to these offences is already covered by common law contempt. The main difference will be the manner in which the misconduct is tried and the procedures that will apply. The costs associated with the new provisions are likely to remain at a similar level, but assuming that juror misconduct cases heard in the Divisional court (with two or more judges) are costlier than those heard in the Crown Court, it is possible that costs to HMCTS may be lower.
69. Key benefits - There could potentially be a more efficient use of court resources, if fewer trials are stopped because of juror misconduct. The introduction of a notice procedure will reduce burdens on publishers and bring greater clarity to publishers where they need to remove prejudicial material.

## **Increase in the age limit for jury service in England & Wales**

70. The objective is to allow people between the ages of 70 and 75 inclusive to sit as jurors. The intended effect is to make juries in England and Wales more representative of the adult population with regard to age than is currently the case, thereby ensuring that juries benefit from the experience and knowledge of people in the 70-75 age group. The latest published figures from the Office for National Statistics show that the healthy life expectancy of men and women at age 65 is at least 10 years in England and Wales.
71. Key costs - HMCTS may incur implementation costs of up to £250k in 2015 as a result of IT changes that would have to be made. However, it is currently expected that the Electoral Commission's costs would be *de minimis* with respect to modifications to the annual voter registration form.
72. HMCTS may incur costs of some £60-80k per year from 2016 due to an increase in the number of summons issued, on the grounds that 70-75 year olds may have a lower propensity to serve on juries than younger adults.
73. Key benefits - Although it is the main policy objective, any improvement in juries' decision-making is an unquantified benefit. In financial terms the Exchequer (i.e. HMCTS) may benefit by up to £1 million per year from 2016 due to having to pay fewer claims for financial loss as fewer serving jurors would be employed than otherwise. There is also a potential gain to GDP, which is currently estimated to be some £3-6 million per year higher than otherwise from 2016 as fewer workers would be temporarily diverted away from their jobs to attend jury service; this is because a greater proportion of the jury pool in England and Wales would be economically inactive than otherwise.

## **Reforms to judicial review**

74. These provisions aim to ensure that judicial review (JR) cases, including those with potentially large impacts on economic development and growth, are resolved as quickly and efficiently as possible and that there is less scope for abuse of the system, such as bringing JR applications with an intention to delay lawful Government action. There are three specific Impact Assessments for the clauses on JR in the Bill, one for Funding and Costs, a second for Refusal of Relief and Leapfrog Appeals and a third for the introduction of a permissions filter in statutory challenges and the standardisation of the start point from which the six week challenge period is calculated. These Impact Assessments also include reforms not being delivered in the Bill, such as the creation of a Planning Court within the High Court and changes to the recovery of costs of oral permission hearings which are part of the wider reform package on judicial review.
75. Key costs - It has not been possible to fully monetise the impacts of these reforms. One off transition costs for HMCTS (e.g. adapting IT systems) are negligible. The cost to claimants as a result of changes to funding and costs are around £1.3m per year from 2014. The costs to defendants are around £0.9m per year.
76. Key benefits -.The benefits to claimants as a result of changes to funding and costs are around £0.9m. The benefits to defendants are around £2.4m per year from 2014. The establishment of a planning court and permission filters in statutory challenges are expected to lead to wider economic benefits as a result of quicker resolution of infrastructure and development cases and the filtering out of unmeritorious cases at an earlier stage. Defendants (public bodies) will also benefit from quicker case resolution and as a result may save legal costs. Some claimants and third parties may also benefit from quicker resolution. HMCTS would benefit from reduced costs if cases are resolved more quickly

## **Dismissal of personal injury claims involving fundamental dishonesty**

77. This provision aims to discourage fundamentally dishonest claims and ensure that compensation is only awarded in cases of genuine and reasonable claims. It introduces a provision to require the court to dismiss in its entirety any claim where it is satisfied that the claimant has been

fundamentally dishonest, unless it would cause substantial injustice to the claimant to do so. It is anticipated that the main effect of the reform will be the wider behavioural impact of discouraging claimants from making exaggerated claims.

78. **Key costs** - Claimants who are fundamentally dishonest will be unable to gain any compensation for the genuine part of their claim as a result of these claims being dismissed entirely. Claimants may receive less compensation if they exaggerate claims less in future. No win no fee claimant lawyers may receive less success fee income as a consequence of reduced compensation for claimants. The Department for Work and Pensions and the Department of Health will be unable to recover benefit payments or health costs in relation to the genuine part of the claim from the defendant through the Compensation Recovery Unit, although the option will remain of pursuing the claimant for the money under fraud procedures if appropriate.
79. **Key benefits** - Defendants (insurers and the NHS) will benefit from paying reduced compensation in relation to fundamentally dishonest claims that are dismissed entirely. Defendants (insurers and the NHS) may benefit from paying reduced compensation if claimants exaggerate less in future. If reduced costs incurred by defendant insurers are passed on via lower insurance premiums then policy holders would benefit (including businesses, local authorities and motorists).

### **Summary**

80. Option 1 is considered the best value for money as it addressed the rationale for intervention in a cost effective way. This is based on the individual assessments of the provisions which can be found included in the individual IAs referenced above.

### **Risk and Assumptions**

81. Key assumptions made in calculating the impacts of the relative provisions can be found in the table below. More detail on the assumptions, and associated risks, can be found in the individual impact assessments referenced above.

**Table 1: Summary of Impacts**

Provision	Quantified Costs			Quantified Benefits		Key Assumptions
	Additional Prison Places Required (at steady state)	Government (including associated prison place costs)	Social	Government	Social	
<b>Restrictions of the use of simple cautions</b>	Not quantified <sup>1</sup>	£10m per annum from 2015/16	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>Costs are highly dependent on the behaviour of the police, Crown Prosecution Service, sentencers and the offenders.</li> </ul>
<b>Changes to framework for sentencing and release</b>	1,000 from 2030	Not quantified <sup>2</sup>	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>We assume that all offenders will have a Parole Board hearing when they reach the half-way point/two-thirds point of their sentence, and subsequent hearings every 15 months, until the end of their sentence.</li> <li>We assume that the Parole Board release 16% of offenders at each parole board.</li> </ul>
<b>Statutory test for release after recall</b>	50 from 2015	£1.5m per annum from 2015/16	None	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>We assume an additional 75 offenders per annum will be affected by this policy.</li> <li>We assume that they will spend on average an additional 234 days in prison each.</li> <li>We assume no impact on numbers as a result of licence conditions for under 12 month group following commencement of the Offender Rehabilitation Act.</li> </ul>

<sup>1</sup> "Not quantified" in this context should be taken to mean that there are likely costs but we are unable to provide an accurate assessment at this moment in time.

<sup>2</sup> We have not quantified the prison place costs for this proposal at steady state due to uncertainty as to relevant unit costs by 2030.

<b>New offence for 'being unlawfully at large (UAL)' and increasing the maximum custodial sentence for 'failing to return to custody following release on temporary licence (ROTL)'</b>	Minimal <sup>3</sup>	£0.2m p.a from 2015/16	N/A <sup>4</sup>	Not quantified	Not quantified	<p><u>UAL</u></p> <ul style="list-style-type: none"> <li>Based on internal management information we estimate that a maximum of 800 – 900 offenders per annum are UAL for more than 28 days. However, we estimated that only the most serious cases would be prosecuted and sentenced and have estimated CJS costs accordingly.</li> <li>The average custodial sentence length given for the new offence and the proportion of offenders receiving the maximum custodial sentence are equivalent to that for the Prisoners (Return to Custody) Act 1995 offence.</li> <li>We assume that 10% of UAL offenders prosecuted will be sent to Crown Court and given the maximum custodial sentence.</li> </ul> <p><u>ROTL</u></p> <ul style="list-style-type: none"> <li>We assume that total volumes of offenders are equivalent to the number of convictions that occurred in 2012, and that all proceedings in 2012 resulted in a conviction.</li> <li>We assume that charging volumes remain the same as now.</li> <li>We assume that 1% of offenders will be sent to Crown Court and given the maximum custodial sentence.</li> </ul>
<b>Electronic monitoring of whereabouts as a compulsory licence condition</b>	Not quantified	Not quantified	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>The Electronic Monitoring contract competition will provide location monitoring technology at an acceptable cost.</li> <li>The location monitoring of offenders will deter them from re-offending.</li> <li>The introduction of Electronic Location Monitoring technology will not adversely affect compliance with licence conditions.</li> </ul>
<b>Extension of the offence of extreme pornography</b>	Not quantified	Not quantified	N/A	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>The number of offenders proceeded against for the extension of the offence to cover depictions of non-consensual sex is highly uncertain, but based on the anecdotal evidence from Scotland (where these types of images are already included in their existing offence) we assume that they will be low.</li> <li>The CJS cost per case is estimated using data on the bestiality arm of the existing offence.</li> <li>Estimates are based on data for offenders averaged across the period 2010-2012. Roughly 50% of offenders are proceeded against in the Magistrates and Crown courts, and the estimated average cost per case accounts for this court split.</li> </ul>
<b>Causing death or serious injury by driving when disqualified</b>	Minimal	£0.25m p.a from 2018/19.	N/A	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>For the causing death offence, MoJ data is used based on the existing offence of causing death by dangerous driving to estimate proportions for disposals, including the average custodial sentence length (ACSL) given of 48.7 months.</li> <li>For the causing serious injury offence, Northern Irish data is used to estimate the number of proceedings. We estimate broadly twice</li> </ul>

<sup>3</sup> "Minimal" in this context is taken to mean less than 20 places.

<sup>4</sup> "N/A" in this context means we would not expect the provision to impact in this area.



						as many proceedings for causing serious injury (7) as for causing death (3). We use the offence of causing death by careless driving as a proxy to estimate proportions for disposals, including the ACSL given of 15.3 months.
<b>Malicious Communications</b>	20 from 2015/16	£2m p.a. from 2015/16	N/A	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>▪ We assume that the number of offenders proceeded against and those given a custodial sentence under section 1 of the MCA will remain broadly similar as in 2012.</li> <li>▪ We use the proxy offence of publication of obscene materials to estimate the proportion of cases tried in each court and the new ACSL given. Data from 2005-2008 shows that on average 25% of cases were tried in the Crown Court and the ACSL given to offenders given immediate custody was approximately 6 months.</li> </ul>
<b>New criminal offence(s) of ill-treatment or wilful neglect</b>	Minimal	£2.3m p.a. from 2018/19	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>▪ The estimates of the number of cases, and the progression of a case through the CJS are based on data for 2012 of the proxy offence s44 the Mental Capacity Act 2005.</li> <li>▪ We assume that, due to differences in the potential prevalence and reporting of ill-treatment or wilful neglect between those with Mental Capacity and those without, the prevalence rate of cases of ill treatment or wilful neglect will be 2.9 times lower than under s44 of the Mental Capacity Act 2005.</li> <li>▪ It has not been possible to make adjustments for the fact that there are two offences - one for organisations and one for individuals - which could increase costs as it is not possible to identify whether the proxy data covers the same range of cases.</li> </ul>
<b>Police Corruption</b>	Minimal	Not quantified	N/A	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>▪ We assume that of the 52 convictions in the public sector in 2012 (not just police officers) only 10% of the number dismissed for gross misconduct would result in additional prosecutions, i.e. 18 cases.</li> </ul>
<b>Detention of young offenders / Secure Colleges</b>	Not quantified	Not quantified	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>▪ We have not provided monetised estimates of costs and benefits as doing so would prejudice the effectiveness of a competition for the delivery of services at any future Secure College.</li> </ul>
<b>Removing high-volume, low-level 'regulatory cases' in magistrates' courts</b>	N/A	Up to £1.7m p.a. from 2016/17	N/A	Up to £11.6m p.a. from 2016/17	N/A	<ul style="list-style-type: none"> <li>▪ Assumes that the total annual volume of magistrates' courts completed remains static from 2012/13.</li> <li>▪ Assumed that proportionate case mix between "in scope" and "out of scope" remains stable</li> </ul>
<b>Criminal Courts Charging</b>	100-250 from 2017/18	£25m from 2015/16	Not quantified	£90m-£170m from 2019/20	Not quantified	<ul style="list-style-type: none"> <li>• Appraised over 10 years (10 year NPV £350m-£700m depending on model).</li> <li>• Assumes case mix and volumes flat line.</li> <li>• Assumes charges and debt rise in line with inflation.</li> <li>• Changes in sentencing behaviour or offender behaviour not modelled.</li> </ul>

<b>Juror misconduct and strict liability contempt by publication</b>	Not quantified / Minimal	Not quantified / Minimal	N/A	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>Number of juror contempt and strict liability cases assumed to be low.</li> <li>Average Custodial Sentence Length (ACSL) given for the new offence is assumed to be the same as for the current offences.</li> <li>Costs and prison places estimated as minimal, but subject to further refinement of assumptions.</li> </ul>
<b>Jury service upper age limit</b>	N/A	Less than £0.1m p.a. from 2016	N/A	Up to £1m p.a. from 2016	£3-6m p.a. in GDP gain from 2016	<ul style="list-style-type: none"> <li>ONS principal population projections by age are adjusted to take account of differential voter registration rates by age = annual E&amp;W juror eligible population</li> <li>10-20% of summoned 70-75 year olds participate in jury service</li> <li>Assumption that policy takes effect from start of 2016; immediate steady state</li> </ul>
<b>Judicial review: funding and costs<sup>5</sup></b>	N/A	£1.2m p.a from early 2014	£1.1m p.a from early 2014	£1.6m p.a from early 2014	£0.6m p.a from early 2014	<ul style="list-style-type: none"> <li>Volume of cases will remain the same as in 2011/2012.</li> <li>Unable to quantify reforms for charging interveners and non-party.</li> <li>TSol rates used for defendant costs. PLP rates for claimant costs</li> <li>LAA data used to assess proportion of legal aid cases and impacts.</li> </ul>
<b>Judicial review: refusal of relief and 'leapfrog appeals'</b>	N/A	Not quantified	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>Volume of cases will remain the same as in 2011/2012.</li> <li>Unable to quantify costs of planning, procedural defects and leapfrogging proposals.</li> </ul>
<b>Dismissal of personal injury claims involving fundamental dishonesty</b>	N/A	Not quantified / Minimal	Not quantified	Not quantified	Not quantified	<ul style="list-style-type: none"> <li>Volume of cases will remain the same as in 2013/14.</li> <li>Savings to defendant insurers from reduction in compensation and legal fee payments. This should translate to lower insurance premiums to the taxpayer.</li> <li>Claimants and legal service providers receive a reduction in compensation and legal fees, respectively.</li> </ul>

<sup>5</sup> These costs and benefits include those for interveners, the legal aid agencies and third parties as well as the costs and benefits to claimants and defendants outlined in paragraphs 76 and 77.