

Title: Criminal Courts Charge IA No: MOJ223 Lead department or agency: Ministry of Justice (MoJ)	Impact Assessment (IA)		
	Date: 24/02/2014		
	Stage: Introduction of legislation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: general.queries@justice.gsi.gov.uk			

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option			
Total Net Present Value (10yr)	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£350m-£700m	£0m	£0m	No NA

What is the problem under consideration? Why is government intervention necessary?
The Criminal Justice System is currently undergoing fundamental reform. As part of this reform, the Government is looking at new ways to fund the Criminal Justice System and reduce the burden on the taxpayer in England and Wales. Rather than this service being entirely funded by tax payers, it is felt that those who break the law and are dealt with by a criminal court should contribute towards its costs. This policy aims to reduce the burden on those taxpayers who do not break the law.

What are the policy objectives and the intended effects?
The objectives of this policy are:
To recover some of the cost of the criminal courts from offenders to fund courts within the reformed Criminal Justice System, making offenders face the cost they impose on the taxpayer in England and Wales.
To achieve high levels of payment of this charge.
To avoid causing hardship by giving offenders the opportunity to apply to pay costs at a rate they can afford.
To promote efficiency and equity by ensuring that more of the costs of the CJS fall to those who use it

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
The following options have been considered:
Option 0: Do Nothing. Continue to fund the criminal courts via taxpayers.
Option 1: Recover some of the cost of criminal courts from offenders.
This option looks to recover some of the cost of criminal courts from offenders, including from their current and future income.
The preferred option is Option 1.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Review will start 3 years after implementation

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

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

Signed by the responsible SELECT SIGNATORY:  Date: 24/02/2014

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £350m	High: £700m	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		£25m	£150m

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

The criminal courts charge will be enforced once other existing financial impositions (that is, compensation, the Victim Surcharge, prosecution costs and fines) have been collected. 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 (in addition to costs of enforcement of current financial impositions). Her Majesty's Courts and Tribunal Service (HMCTS) have commenced a procurement process to identify an external provider for the future delivery of compliance and enforcement activity for criminal financial impositions. This will improve efficiency and the collection of financial impositions as well as reduce the cost of current service. For ease of reference, within this impact assessment enforcement functions are described as being performed by HMCTS although they may later be delegated to an external provider.

Courts will have a sanction of last resort available to them in the form of committal to custody for offenders for example those who wilfully refuse or culpably neglect to pay their charge where other enforcement methods are inappropriate or have been unsuccessful. It is estimated that the potential increase in prison occupancy resulting from this sanction could lead to a cost of around £5m per annum in steady state (although the actual costs are dependent on capacity)¹.

Additional debt is expected to be owed to HMCTS after the introduction of the charge as there will be a delay between imposition of the charge and payment by some offenders. The Criminal Justice and Courts Bill includes powers for the court to cancel outstanding charges in certain circumstances. Without this provision, modelling work estimates there would be an increase in debt estimated to be between £700m and £1,200m by 2019/20². In practice we would expect a significant portion to be written off or cancelled - in part because offenders may have made regular payments and desisted from offending leading to the charge being cancelled, and in part because the court will have a power to cancel debt if it is unenforceable.

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

Improved data sharing powers between HMCTS and HMRC may enable improved data sharing arrangements in the future, which could facilitate enforcement of the criminal courts charge. If data sharing is used to a greater extent because of the introduction of the criminal courts charge, this may however lead to additional administration and IT costs.

HMCTS may also incur additional costs in accounting for debt from the charge.

¹ This estimate is based on an increase of between 100 and 250 prison places and has been rounded to the nearest £5m. The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs may be significantly higher as contingency measures will have to be found to ensure that offenders who refuse to contribute towards their charge can be placed in custody.

² See Annex C for further details on debt build up.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			£75m	£500m
High			£135m	£850m
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’

Two approaches have been used to estimate the potential cash inflows that could be realised from the imposition of a charge to recover court costs³:

Based on model A, estimated cash inflow from the criminal courts charge grows to between around £105m per annum by 2022/23 if charges are based on the higher level of charges modelled, and up to around £90m per annum by 2022/23 if charges are based on the lower level of charges modelled.

Based on model B, estimated cash inflow from the criminal courts charge grows to around £145m-£190m per annum by 2022/23 if charges are based on the higher level of charges modelled, and up to around £125m-£160 per annum by 2022/23 if charges are based on the lower level of charges modelled⁴.

Other key non-monetised benefits by ‘main affected groups’

There is a possibility that HMCTS will have a stronger incentive to ensure the accurate completion of means assessments, as the courts will be able to recover more cash flows from those offenders subject to the charge. This may also have the benefit of increasing cash flows from other forms of financial imposition as well as the charge.

The charge levels that have been used for the modelling differentiate between offenders who submit guilty pleas and not-guilty pleas. If this is the approach used in the operation of the criminal courts charge, it could provide a small additional incentive to plead guilty where appropriate.

The imposition of the criminal courts charge in addition to an offender’s existing sentence could possibly act as a factor in deterring offenders from committing further offences in the future. However, this potential benefit is highly uncertain and difficult to assess.

There is potential for improved data sharing between HMRC and HMCTS under powers introduced in the Crime and Courts Act 2013. This may make it easier for those enforcing the charge to collect payments from offenders. Any benefits of increased data sharing and the checks on income and employment that these facilitate would also be applicable to other financial impositions.

³ All figures have been rounded to the nearest £5m.

⁴ The ranges in model B are based on varying assumptions on the amounts that could be recovered from offenders’ benefits, and the amounts that would be paid by ‘unmatched’ offenders. See [Annex B](#) for further details.

Risks and sensitivities

The key sensitivities associated with this policy are

- any future changes in volume and case mix of those sentenced;
- changes in offender behaviour – numbers pleading guilty, electing for Crown Court trial, accepting cautions, or paying fixed penalty; and
- changes in the labour market and wider economic context.

These could change cash flows from the criminal courts charge, including through changing the number of offenders charged at different levels.

There are a number of areas where the impact of the policy is uncertain including on offenders gaining legitimate employment and choosing to desist from offending, and on any changes to sentences and in particular the levels of other financial impositions.

Further details of these sensitivities along with possible mitigations are provided in the evidence base.

Assumptions and sensitivities

A commencement date of 1 April 2015 is assumed for the modelling underpinning this Impact Assessment. The charge will only apply in relation to offences committed after the implementation date. Average offence to completion times have been used to model when the charge would start to be imposed.

It is assumed for modelling purposes that the charge levels would be based on court costs categorised by the offence type, court type and plea type. The modelling considers a range of levels of charging. We intend to do further work before deciding the actual level of charge we will impose but envisage that for more serious cases – such as Crown Court trials, we would set charges below the actual cost of a case and there will not be cross subsidisation.

The modelling for court costs assumes that offenders in the years following the implementation year will be the same as those in the 12 months to March 2013⁵ in terms of volumes and the mix with respect to pleas, offence types, court venues and sentencing disposals.

The modelling assumes that the level of charges and the charges to be paid will be uprated by inflation each year. The Lord Chancellor will have the power to make regulations to require offenders to pay interest at the rate of inflation on unpaid charges. The decision about the use of the power will depend on an assessment of the size of the net benefit to HMCTS.

Collection of the criminal courts charge would come after compensation orders, Victim Surcharge, prosecution costs and fines.

Offenders under the age of 18 at the time the offence is committed will be exempt from the charges.

It is assumed that if a person is initially prosecuted for one offence but then convicted of another, the charge will be set on the basis of the offence for which they were convicted (if there is any difference in the level of the charge that would be imposed).

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

⁵ There were a total of 1,149,858 adults sentenced in the 12 months to March 2013 (table Q5.8). (This will include some offenders who are later acquitted on appeal) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/231049/sentencing-tables-0313.xls.

Evidence Base (for summary sheets)

Introduction

1. The Criminal Justice System is currently undergoing fundamental reform. As part of this reform, the Government is looking at new ways to fund the criminal courts and reduce the burden on the taxpayer in England and Wales. Rather than being entirely funded by taxpayers, this Government believes that those who break the law and are dealt with by a criminal court should contribute towards its costs.
2. The charge will be recovered using a similar range of enforcement options as exist for fines and other payments ordered by the court. This will enable deductions of amounts owed from offenders' employment income where an offender has defaulted on payment. The criminal courts charge will be collected and enforced alongside other existing financial impositions (that is, fines, compensation, the Victim Surcharge and prosecution costs). Her Majesty's Courts and Tribunal Service (HMCTS) have commenced a procurement process to identify an external provider for the future delivery of compliance and enforcement activity for criminal financial impositions. This will improve efficiency and the collection of financial impositions as well as reduce the cost of current service.

Rationale for Intervention

3. The conventional economic approach to Government intervention to resolve a problem are based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
4. The primary purpose of the proposed intervention is to recover part of the costs of the criminal courts from offenders who break the law and are convicted in a criminal court. This will have the effect of reducing the burden on all taxpayers and ensuring convicted offenders contribute to the costs of the criminal courts. The economic rationale for this policy therefore predominately relates to efficiency arguments. Offenders impose costs on the UK taxpayer and therefore imposing this cost on the offenders themselves reduces the costs to non-offending taxpayers.

Policy objectives

5. The objectives for this policy are as follows:
 - To recover some of the cost of the criminal courts from offenders to fund courts within the reformed Criminal Justice System, making offenders face the cost they impose on the taxpayer in England and Wales.
 - To achieve high levels of payment of this charge.
 - To avoid causing hardship by giving offenders the opportunity to apply to pay costs at a rate they can afford.
 - To promote efficiency and equity by ensuring that more of the costs of the CJS fall to those who use it.
 - To provide an incentive not to offend, by providing a power for courts to cancel the charge.

- The charge is not intended to be a punishment, but a way of making sure that those who break the law and take up court time are required to contribute towards the resulting costs.

Policy Options considered

Option 0: Do Nothing

- By doing nothing, no additional revenue would be brought in to fund the Criminal Justice System and the cost of criminal courts will continue to be funded by the taxpayer.

Option 1: Recover the cost of criminal courts from offenders

- This option looks to recover some of the cost of criminal courts from convicted offenders' incomes, including their future earnings.

The Criminal Courts Charge

- The 'charge' refers to the amount an offender would be required to pay towards criminal court costs. The charge will only be imposed on those who have been convicted by the court of an offence, for unsuccessful appeals and certain post-conviction hearings. Those who are found not guilty will not be charged for court costs. Where a defendant is acquitted on appeal, the charge will be withdrawn and any payments which the defendant has made towards the charge will be returned. It is proposed that the Lord Chancellor will have the power to set the charge by secondary legislation.
- It is expected that the level of the charge will be set at or below the costs reasonably attributable to the class of an offender's case. We have estimated the cost of different types of cases to HMCTS to model the potential level at which the Lord Chancellor may set the charge in order to model cash inflows from the policy. For the purpose of the modelling and this impact assessment, these charges are based on the type of offence (summary motoring, summary non-motoring, either way or indictable only), the court at which the case is heard (magistrates' or Crown) and the plea (guilty or not guilty)¹.
- There are a number of different ways the costs of cases can be estimated, depending on how indirect costs are apportioned. We have modelled two sets of charges: a lower set, limited to a maximum of £600, and a higher set, limited to a maximum of £1000. £600 and £1000 have been chosen as illustrative limits because we do not expect the charge for some cases to be as high as the cost of those cases. The analysis uses average timings from the Activity Based Costings allocations model to allocate 2012/13 (these are updated to 2013/14 prices in the analysis in this impact assessment) cost to proceedings and receipt types. These estimated costs are the basis for the charges used in the analysis.
- The tables below sets out the level of charges that have been used in the purpose of the modelling for sentenced offenders.²

Charges used in modelling:

Charges by band (13/14 prices)	1	2
<u>In the Magistrates' Court</u>	Lower	Higher
Summary motoring guilty plea	£190	£200
Summary non-motoring guilty plea	£150	£150
Summary motoring trial	£450	£620
Summary non-motoring trial	£500	£800

¹ Additionally we will charge for appeals and breach hearings but these have not been modelled here (see sensitivities section).

² All charges have been rounded to the nearest £10. Additionally, the modelling does not distinguish between offenders in single and multi-defendant cases.

Either way guilty plea in the magistrates' court	£210	£270
Either way trial in the magistrates' court	£550	£900
<u>In the Crown Court:</u>		
Indictable guilty plea	£500	£550
Either way or indictable trial in the Crown Court	£600	£1,000

13. These charge figures are only intended to give an indication of the level of charges that the Lord Chancellor may set. Further analytical work will be carried out on the cost of criminal court cases.

Enforcing the Criminal Courts Charge

14. The charge will be recovered using a similar range of enforcement options as exist for fines and other payments ordered by the court. A procurement process is underway to contract out HMCTS compliance and enforcement activity to an external provider under the HMCTS Compliance and Enforcement Project. This project aims to increase efficiency and reduce the overall cost of HMCTS enforcement.
15. It will be possible to immediately recover the charge from offenders who are able to pay when the charge is ordered. However, where an offender does not have sufficient means to pay the charge at the point it is imposed, they will be able to make payments over a period of time. The rate at which they are expected to pay will be the same as for paying a fine and other financial impositions, based on the offender's income. If an offender's financial circumstances subsequently change, HMCTS will be able to use information about the offender's means to amend the rate of payment of the charge where appropriate.
16. Fines officers already have the power in certain circumstances to vary an offender's payment rate prior to that offender having defaulted on his or her payments. Alongside the criminal courts charging proposals, this power will be extended to enable fines officers to vary repayment rates after the point of default. Fines officers will also be able to increase an offender's payment rate, at any time, with the consent of the offender. These extensions will provide greater flexibility to enable an offender who is willing to repay to do so at a rate he or she can afford. Specifically the ability to vary after default will allow an offender to continue to repay at a lower rate, if appropriate, rather than his or her case being automatically escalated to distress warrant stage, for example.
17. HMCTS may look to charge individual offenders for additional costs of enforcement ('collection costs'). It is anticipated that this procurement will be complete and the service in operation by 2015. For the purposes of this analysis, we have assumed that the cost of enforcement falls to MoJ rather than offenders.
18. In the future it may be possible to improve enforcement of the charge (and other types of financial imposition) through making use of data sharing powers provided under the Crime and Courts Act 2013. Increased data sharing between HMCTS and HMRC may enable HMCTS to identify whether an offender is working, how much an offender is earning, and if/when there are any changes to their income.
19. Collection of the charge will start once other financial impositions have been paid off. For those offenders sentenced to imprisonment, the offender will remain liable to pay the charge on release from prison.

Groups Affected

The Main Affected Groups:

20. The policy involves recovering the costs of criminal courts from convicted offenders. Therefore a range of criminal justice agencies as well as related enforcement organisations will be affected.
21. The main groups affected by this proposal are:
 - Her Majesty's Courts and Tribunals Service (HMCTS)
 - Her Majesty's Revenue and Customs (HMRC)
 - National Offender Management Service (NOMS)/ Her Majesty's Prison Service (HMPS)
 - Department for Work and Pensions (DWP)
 - Home Office/Police
 - Enforcement contractor
 - Wider society

Cost and Benefits

Base Case/Option 0

22. The base case is the "do nothing" option, not making offenders contribute towards the cost of criminal courts. This means that as this option can only be compared with itself, the costs and benefits will be zero, as is the option's Net Present Value.

Option 1: Recover the cost of criminal courts from offenders

Costs of Option 1

Costs to HMCTS

23. HMCTS would be expected to use similar enforcement systems to enforce the criminal courts charge as are used in relation to fines and other payments ordered by the court. There will be costs imposed in meeting the additional demand in addition to their existing enforcement costs. It is estimated that the total cost of transitioning to and maintaining a service that includes enforcing court cost charge is £20m per year (in addition to costs of enforcement of current financial impositions).
24. The enforcement of financial impositions cost HMCTS £50.9m³ in 2012/13, but future costs will depend on the costs of the future provider. HMCTS had cash collection levels of £284m in 2012/13⁴. We estimate that the total cost of transitioning to and enforcing the criminal courts charge would be around £20m per year (in addition to current enforcement costs). While it is likely that costs are not directly related to the value of additional income and this estimate is not precise, it is in relation to the current level of recovery and spend on enforcement.
25. Although the collections in the first year of the policy (2015/16) would be lower than in later years, it is assumed that the enforcement cost would still be around £20m⁵ as it is expected that there would

³ This figure was provided by HMCTS Enforcement against a budget of £53.3m and is based on their current staff costs.

⁴ <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/2013/hmcts-annual-report-2012-13.pdf> (pg 19).

⁵ Plus the £5m estimated prison costs (which are unlikely to impact in this year).

be additional transition costs incurred in the first year which would not be incurred once the criminal courts charge is fully implemented. Further work will be done to estimate set up costs in 2014/15.

26. The additional powers for fines officers to vary repayment rates for offenders are not expected to lead to any significant additional administration costs. In practice, fines officers are already involved in variation of payment rates prior to default. These extended powers are simply providing fines officers with additional options for enforcing debts against offenders they are already working with.
27. Improved data sharing powers between HMCTS and HMRC may enable improved data sharing arrangements in the future, facilitating enforcement of the criminal courts charge

Debt Accrual

28. Additional debt is expected to be owed to HMCTS after the introduction of the charge. As it is likely that much of the debt will not be paid off straight away and some debt will not be paid at all, there will be an increase in the accrual of debt within the first few years of the policy as there will be a delay between the charge being imposed, cash flows being realised and debt being written off and cancelled.
29. The level of debt accruing depends on a number of factors including the level of charge issued and amounts paid. The Bill includes powers for the court to cancel outstanding charges in certain circumstances. The policy has been designed to create an additional incentive not to reoffend by including a limit on the period during which an offender will be expected to make payments towards the criminal courts charge if that offender has both not reoffended during that period and has complied with the payment terms which have been imposed. When offenders have desisted from offending and made regular payments of the charge for a certain amount of time, their debt may be cancelled. Courts also have the power to cancel the charge after a specified period of time if it is unenforceable. Without this provision, modelling work estimates there would be an increase in debt estimated to be between £700m and £1,000m by 2019/20.⁶ The provision to cancel the charge will allow HMCTS to manage this risk, as well as incentivising offenders not to reoffend.

Costs to Her Majesty's Prison Service (HMPS)/National Offender Management Service (NOMS)

30. Offenders who, for an imprisonable offence, have sufficient means to pay the amount owed forthwith, but do not do so, or, for other offences, willfully refuse or culpably neglect to pay the charge where other enforcement methods are inappropriate or have been unsuccessful, are liable to the sanction of committal to prison in default. 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 would 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 annum⁷ (although the actual costs are dependant on capacity).

Costs to the Home Office/Police

31. This policy has the potential to impact on the police, however the impact is expected to be small. The police are currently only involved in executing enforcement warrants when offenders are assessed as high risk, although in some areas the police will be more heavily involved under arrangements with courts. There is the potential that if this work remains with the police that there could be a small increase in the number of warrants they are executing if there are increased levels of default under the charge. It has not been possible to quantify this impact but it is expected to be minimal.

⁶ See Annex C for further details on debt build up.

⁷ This estimate is based on an increase of between 100 and 250 prison places and has been rounded to the nearest £5m. The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs may be significantly higher as contingency measures will have to be found to ensure that offenders who refuse to contribute towards their charge can be placed in custody.

32. We have not assumed any changes in reoffending rates. The policy has been explicitly designed to create an additional incentive not to reoffend by including a limit on the period during which an offender will be expected to make payments towards the criminal courts charge if that offender has both not reoffended during that period and has complied with the payment terms which have been imposed.

Costs to DWP/HMRC

33. This policy is expected to have some impact on HMRC and DWP. The current enforcement process for existing financial impositions including compensation and fines requires some interaction between the enforcement function and other government departments that are responsible for collecting debt from offenders. If the new charge results in opportunities for improved data sharing between HMCTS and HMRC being used more frequently than they would have been otherwise, there may be an additional cost to HMRC in providing this data for collection purposes which they will pass on to HMCTS.
34. There are already strong links between HMCTS and DWP for the purposes of collecting financial impositions, as payments can currently be made towards court imposed debt through taking deductions from an offender's benefits. Offenders in receipt of benefits will also contribute to criminal court charges. The implications of how recovery from benefits for those who default on payment of the criminal courts charge might work in practice are currently being considered. If it is agreed that deductions are to be made from benefits in order to pay the charge, there may be an increase in applications made by the enforcement function to deduct from benefits, which would have administrative impacts and lead to additional costs for DWP. Due to the priority order that debts are collected in by DWP, collecting a larger amount of debt due to the introduction of the criminal courts charge would have an impact on debts which are lower down in this order of priority, as it will take longer for the offender to reach the point of repaying these debts. This could have an impact on the recovery of debts owed to DWP.

Benefits of Option 1

35. The cost of criminal courts represents a burden on those taxpayers in England and Wales who have no interaction with the Criminal Justice System. The imposition of a charge for offenders to contribute to the cost of criminal courts will mean that some of the costs are borne by those who are convicted of criminal offences⁸.
36. Two approaches have been used to estimate the potential cash inflow that could be realised from the imposition of a criminal courts charge to recover court costs. One approach (model A) uses adjustments of data on fine impositions and amounts paid, while the other approach (model B) is based on data on offender means. Further details on model A and model B can be found in [Annex A](#) and [Annex B](#) respectively.

Benefits to HMCTS

37. The tables below summarise the total cash inflow estimates⁹ (in real terms) derived from the two models¹⁰.

Model A

Total cash inflows in real terms (rounded to nearest £5m):

⁸ As a zero weighting is given to costs or benefits directly accruing to offenders this leads to a net benefit to society.

⁹ All figures have been rounded to the nearest £5m.

¹⁰ These estimates are highly uncertain as they are based on a large number of assumptions due to limited available data. These assumptions are set out in the 'Risks, assumptions and sensitivities' section.

Rounded (to nearest £5m)	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Charges 1	£0m	£0m	£5m	£65m	£90m	£90m	£90m	£90m	£90m	£90m
Charges 2	£0m	£0m	£5m	£75m	£105m	£105m	£105m	£105m	£105m	£105m

Model B

Total cash inflows in real terms (rounded to nearest £5m):

		2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Based on lower charges (Charges 1)	<u>Lower payment assumptions</u> ¹¹	£0m	£0m	£10m	£50m	£65m	£85m	£95m	£100m	£115m	£125m
	<u>Higher payment assumptions</u>	£0m	£0m	£15m	£70m	£105m	£130m	£150m	£150m	£155m	£160m
Based on higher charges (Charges 2)	<u>lower payment assumptions</u>	£0m	£0m	£15m	£55m	£75m	£95m	£105m	£115m	£130m	£145m
	<u>Higher payment assumptions</u>	£0m	£0m	£20m	£80m	£115m	£145m	£170m	£175m	£180m	£190m

38. The tables above show that based on model A, estimated cash inflow from the criminal courts charge policy grows to around £90m per annum by 2022/23 if charges are based on the lower set of charges, and up to around £105m per annum by 2022/23 if charges are based on the higher set of charges. See Annex A for further details.
39. Based on model B, estimated cash inflow from the criminal courts charge policy grows up to around £125m to £160m per annum by 2022/23 if charges are based on the lower level of charges modelled and up to around £145m to £190m per annum by 2022/23 if charges are based on the higher level of charges modelled¹². See Annex B for further details.
40. Where an individual is summoned to attend a hearing in the criminal courts, they will be asked to provide information about their means. This can enable the court to set an appropriate payment rate for the charge based on the offender's income. There is the possibility that there may be a stronger incentive in ensuring the accurate completion of means forms or using alternative means assessments as the courts may then be able to recover more from those offenders subject to the charge. This may also have the benefit of increasing recovery from other forms of financial imposition as well as the charge.

Guilty pleas

41. It has been assumed for modelling purposes that the charging levels for the cost of criminal courts should be different for those offenders plead guilty and those who do not. If this approach is implemented, this policy would continue to provide a small incentive for guilty pleas where appropriate, thereby potentially reducing the burden on criminal court time and resources.

Reoffending

42. The imposition of a criminal courts charge in addition to an offender's existing sentence could possibly act as a factor in deterring offenders from committing further offences in the future. However, this potential benefit is highly uncertain and the impact is not possible to quantify as there is limited evidence available on the scale of any such deterrent effect.

Benefits to enforcement

¹¹ The ranges in model B are based on varying assumptions on the amounts that could be recovered from offenders' benefits, and the amounts that would be paid by 'unmatched' offenders. See Annex B for further details.

¹² The ranges in model B are based on varying assumptions on the amounts that could be recovered from offenders' benefits, and the amounts that would be paid by 'unmatched' offenders. See Annex B for further details.

43. It is possible that the extended powers for fines officers to vary repayment rates for offenders may lead to a small improvement in the effective enforcement of debt due to the fact this may enable offenders who want to continue to pay but can only afford to do so at a lower rate, rather than escalating their case to a distress warrant or returning the case to court.
44. If HMCTS makes use of improved data sharing capabilities with HMRC, it could be expected to lead to increased levels of recovery of the criminal courts charge. If these data sharing capabilities are put in place, they will be used for the collection of all existing financial impositions as well as the criminal courts charge.

Net Impact of Option 1

45. The tables below summarise the net cash income (i.e. cash income less costs) in real terms and the 10 year Net Present Value (NPV) estimates of this policy, in 2013/14 prices, derived from model A and model B.
46. The tables below present the cash income in real terms of the policy. Under resource accounting rules, income from the policy will be recognised and accounted for at the point of imposition, rather than when cash is received. The expectation that offenders are unlikely to commence payment or pay in full at the point of imposition creates a timing difference between cash inflows and resource accounting treatment due to the lag in payments.
47. In the first phase of implementation, with a full year of enforcement costs, the cash position in real terms 15/16 is negative. However as the income will be recognised from the point of imposition rather than when the cash is received, we would still expect to see a net benefit that year in MoJ accounts.

Model A

Net cash income in real terms

Net (rounded to nearest £5m)	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Charges 1	£0m	£0m	-£20m	£40m	£65m	£65m	£65m	£65m	£65m	£65m
Charges 2	£0m	£0m	-£20m	£50m	£80m	£80m	£80m	£80m	£80m	£80m

10 year NPVs (rounded to nearest £100m):

	10 year NPV £m
Charges 1	350
Charges 2	400

Model B

Net cash income in real terms

Net (rounded to nearest £5m)		2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Based on lower charges (Charges 1)	Lower payment assumptions¹³	£0m	£0m	-£15m	£25m	£40m	£60m	£70m	£75m	£90m	£100m
	Higher payment assumptions	£0m	£0m	-£10m	£45m	£80m	£105m	£125m	£125m	£130m	£135m

¹³ The ranges in model B are based on varying assumptions on the amounts that could be recovered from offenders' benefits, and the amounts that would be paid by 'unmatched' offenders. See Annex B for further details.

Based on higher charges (Charges 2)	<u>lower payment assumptions</u>	£0m	£0m	-£10m	£30m	£50m	£70m	£80m	£90m	£105m	£120m
	<u>Higher payment assumptions</u>	£0m	£0m	-£5m	£55m	£90m	£120m	£145m	£150m	£155m	£165m

10 year NPVs (rounded to nearest £100m):

		10 year NPV £m
Based on lower charges (Charges 1)	<u>Lower payment assumptions</u> ¹⁴	350
	<u>Higher payment assumptions</u>	600
Based on higher charges (Charges 2)	<u>lower payment assumptions</u>	400
	<u>Higher payment assumptions</u>	700

48. The first table considers the criminal court charging cash inflows estimated from model A, along with estimated enforcement costs and estimated increased prison occupancy costs and calculates their net present value. Given these, it is estimated that based on model A, the 10 year NPV of the criminal court charging policy is around £350m if charges are based on charges 1, and around £400m if charges are based on charges 2.
49. The second table considers the criminal courts charge cash inflows estimated from model B, along with estimated enforcement and prison costs and calculates their net present value. Given these, it is estimated that based on model B, the 10 year NPV of the criminal courts charge policy is around £350m - £600m if charges are based on charges 1, and around £400m - £700m if charges are based on charges 2 (to note although income in model B reaches higher levels of income, it takes longer to do so).
50. Based on both model A and model B, it is therefore expected that the criminal courts charge policy would have a net benefit over 10 years.
51. Additionally, whilst there may be some further administrative costs arising from the recording of accurate means information and to improve data sharing, it is expected that these changes would add to enforcement capabilities, therefore also providing benefits.

Assumptions/Risks

52. For the analysis of the impact to the criminal justice system from recovering criminal court costs through charging offenders, a number of assumptions were made, which come with associated risks.

Assumption	Risk
A commencement date of 1 st April 2015 is assumed for this policy to date and the modelling underpinning this Impact Assessment. Any offenders committing offences before the policy implementation date are not charged. Average offence to completion times have been used to determine those offenders who would have committed the offence before the policy	<ul style="list-style-type: none"> If the commencement date were to change, the expected cash inflows and cost impacts would change.

¹⁴ The ranges in model B are based on varying assumptions on the amounts that could be recovered from offenders' benefits, and the amounts that would be paid by 'unmatched' offenders. See [Annex B](#) for further details.

<p>commencement date. A 5 month average lag is assumed based on 2013 Q3 figures¹⁵. This period is applied to all those paying the criminal court charge as there would always be this delay between the offence being committed and a sentence being given and therefore the criminal courts charge being imposed.</p>	
<p>It is assumed for the modelling that the estimated charge levels set would be based on criminal court costs categorised by the offence type, court type and plea type. The modelling considers two levels of cost within each of these bands. These give an indication of how sensitive the potential criminal court costs recovered are to the level of charges set.</p>	<ul style="list-style-type: none"> • The expected level of income from the policy will be highly dependent on the levels of charges for different offender groups.
<p>It is assumed that offenders in the years following the implementation year will be the same as those in the implementation year in terms of volumes and the mix with respect to pleas, offence types, court venues and sentencing disposals. It is possible that the annual amounts paid by new cohorts may vary if they have differing characteristics, particularly volumes, to those in the implementation year. The modelling assumes that caseload will remain at the level of the most recent published numbers.¹⁶</p>	<ul style="list-style-type: none"> • Changes in offender characteristics could have a large effect on the expected impacts of the policy. In recent years, criminal court caseload volumes have been falling¹⁷. Were this change to continue, the expected cash inflow from this policy would decrease. Similarly, changes in the case mix would also affect total costs charged and cash inflows collected.
<p>The modelling assumes that the level of charges and the charges to be paid will be uprated by inflation each year. The Lord Chancellor will have the power to make regulations to require offenders to pay interest at the rate of inflation on unpaid charges. The decision about the use of the power will depend on an assessment of the size of the net benefit to HMCTS.</p>	<ul style="list-style-type: none"> • If the cost of the courts changes at a rate other than inflation, for example following increased efficiencies, this would affect the level of income from the policy • If the costs of running courts decreases, the charges would need to decrease in line with this. However, as we will only ever recover a portion of costs, there will still be a net benefit to Government from reducing the costs of courts.
<p>It is assumed that the payment of the criminal courts charge will be paid after compensation orders, victims surcharge, prosecution costs and fines. This means that the offender would need to pay off each of these penalties before beginning to pay off the criminal courts charge. For offenders convicted a second time, this means that they would have to have paid off the other financial impositions for both offences followed by the criminal courts charge for the</p>	

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls#3.8!A1

¹⁶ There were a total of 1,141,739 adults sentenced in the 12 months to June 2013 (table Q5.8) (This will include some offenders acquitted on appeal) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260137/sentencing-tables-0613.xls.

¹⁷ Court statistics (quarterly) July–September 2013, Table 3.1 and 3.2

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls

<p>first (if not already paid off) and then the second offence. The modelling incorporates payment delays in order to account for these prior payments.</p>	
<p>It is assumed that if a person is initially prosecuted for one offence but then convicted of another, the charge will be set on the basis of the offence for which they were convicted (if there is any difference in the level of the charge that would be imposed).</p>	
<p>Offenders who are required to pay any financial impositions are currently expected to provide information about their means for the court. This information helps to inform the court in setting the appropriate rate of payment according to the individual offender's circumstances. Providing information about means, including employment details also allows for better enforcement of the payment. Model B, by using HMRC/DWP data assumes that information provided about the means of an offender is accurate and comprehensive, although this is not always the case.</p>	

Additional Risks

53. Recovering criminal court costs through charging offenders may also pose the following risks:

54. Sentencing behaviour/financial impositions

- The criminal courts charge is not a punishment or penalty and legislation will make clear that those sentencing should not take the charge into account. To ensure that they do not seek to take the charge into account in mitigation, clear guidelines to Sentencers will make clear that the charge can not be a mitigating factor and therefore should not impact on the amount of financial penalties ordered and the associated cash flows. The criminal courts charge will be paid after compensation orders, victims surcharge, prosecution costs and fines, therefore limiting any potential effects. Additionally, improved enforcement resulting from better data sharing could also help to mitigate this risk.

55. Changes in offender behaviour. This includes more defendants pleading guilty, not opting to be tried in the Crown Court, accepting cautions, or paying fixed penalty notices.

- We have considered whether there is a risk that an offender may feel that they have reduced choice in whether to plead guilty or go to trial as that may result in a higher criminal courts charge than otherwise, particularly if that offender has limited means. The policy will not impose a charge on anyone who is found not guilty. Additionally, if an offender is found guilty and charged, the rate at which they pay the charge can be adjusted according to their income. This should act as a mitigating factor by ensuring that offenders would not be expected to pay the charge at a rate which is beyond their means.
- We have also considered whether offenders may be incentivised not to opt for trial in the Crown Court, to accept cautions or to pay Fixed Penalty Notices (FPNs) rather than opting for a trial. However as before, the policy will not impose a charge on anyone who is found not guilty. Additionally, if an offender is found guilty and charged, the rate at which they pay

the charge can be adjusted according to their income. This should act as a mitigating factor by ensuring that offenders would not be expected to pay the charge at a rate which is beyond their means.

56. Offenders gaining legitimate employment

- We have considered whether offenders who would have undertaken legitimate employment may instead undertake non-legitimate employment or in the case of the self-employed, under-report their legitimate income as a result of the charge, which could reduce cash flows from the charge and taxation. The amount taken from those in employment will be tiered to ensure there are not potential disincentives to work. Also, offenders will be expected to pay the criminal courts charge if they are in receipt of benefits as well as if they are in employment. Improved data sharing with HMRC may provide data on offenders' incomes which could mitigate the risk of underreporting income from legitimate employment when assessing offender means. Additionally, HMRC would be expected to continue to use existing measures to identify and prevent non-legitimate employment.
- There is a complex interplay between employment, offending and reoffending. Evidence points towards employment status affecting and being influenced by offending¹⁸. It has also been found to affect other factors linked to offending and reoffending, particularly accommodation and drug and alcohol misuse.¹⁹ Studies have shown that the extent and frequency of offending diminish when offenders gain employment^{20,21,22} and offenders with stable and quality employment are less likely to reoffend.²³
- Evidence suggests that steady employment – particularly if it offers a sense of achievement, satisfaction or mastery – can support offenders in stopping offending.²⁴ Employment has been identified as an important factor in supporting desistance among offenders aged over 27.²⁵ However, employment alone cannot prevent offending, and some offenders can desist without employment.²⁶

57. Reoffending

- The policy has been designed to create an additional incentive not to reoffend by including a limit on the period during which an offender will be expected to make payments towards the criminal courts charge if that offender has both not reoffended during that period and has complied with the payment terms which have been imposed. As with any imposition, there are potential ways in which this policy could affect levels of reoffending in either direction. The imposition of a criminal courts charge in addition to other fines imposed on offenders could reduce offenders' net incomes and thereby provide an upward pressure. However, this is unlikely to drive the overall trend and it is highly uncertain whether this pressure would materialise. There may also be possible further secondary effects of debt on offenders as a result of the charge being issued (e.g. risks to family breakdown) which may be then linked to reoffending. However, as it will be possible for the criminal courts

¹⁸ Ministry of Justice (2013) *Analysis of the impact of employment on re-offending following release from custody, using Propensity Score Matching*. London: Ministry of Justice.

¹⁹ For a useful summary of current evidence, see: Hopkins (2012) *The pre-custody employment, training and education status of newly sentenced prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*, London, Ministry of Justice: <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/pre-custody-empl-training-edu-status-newly-sentenced-prisoners.pdf>

²⁰ Farrington, Gallagher, Morley, St Ledger, & West (1986) Unemployment, School Leaving and Crime, *British Journal of Criminology*, Vol. 26, No. 4, p335-356.

²¹ Sarno, Hearnden, Hedderman, Hough, Nee & Herrington (2000) *Working Their Way Out of Offending: an Evaluation of Two Probation Employment Schemes*, Home Office Research Study 218, Home Office.

²² MoJ (2010) *Compendium of reoffending statistics and analysis*, London, Ministry of Justice. See Table 2.37 at <http://www.justice.gov.uk/downloads/statistics/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-csv-tables-a.csv>

²³ Sapouna et al. (2011) *What works to reduce reoffending: a summary of the evidence*, Justice Analytical Services, Scottish Government: <http://scotland.gov.uk/Resource/0038/00385880.pdf>

²⁴ Farrall (2002) *Rethinking What Works with Offenders*, Cullompton, UK, Willan Press; Ministry of Justice (2013) *Analysis of the impact of employment on re-offending following release from custody, using Propensity Score Matching*. London: Ministry of Justice.

²⁵ Uggen (2000) 'Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism', *American Sociological Review* 65 (4): 529-46.

²⁶ See, for example, Giordano, Cernkovich & Rudolph (2002) 'Gender, crime and desistance: Toward a theory of cognitive transformation', *American Journal of Sociology*, 107, 990-1064.

charge to be repaid at a rate that the offender could afford, this is a mitigation for the risk. Additionally, as mentioned earlier, it could act as a deterrent.

58. Risks of any interaction with income related benefits/Universal Credit

- There is some uncertainty around the net income of offenders on benefits which could impact on the modelling in this impact assessment, and therefore could affect projected income from this policy in either direction.

59. Labour market and wider economic context

- Two models have been used to appraise the potential impacts of the policy. The first uses current fine impositions and amounts paid adjusted by a variety of assumptions, and the second is based on uprated earnings/benefits for the period 2003/04-12/13. The former implicitly assumes that offenders' ability to pay financial impositions in the future is similar to that of today. For the former, the modelling assumes that the level of employment and earnings in the future are comparable to those during that period. Changes in the labour market and wider economic context could change cash flows from the criminal courts charge.
- As set out above, we have considered whether offenders who would have undertaken legitimate employment may instead undertake non-legitimate employment or in the case of the self-employed, under-report their legitimate income as a result of the charge, which could reduce cash flows from the charge and taxation. The amount taken from those in employment will be tiered to reduce potential disincentives to work, which should mitigate these risks. Improved data sharing with HMRC may provide data on offenders' incomes which could mitigate the risk of underreporting income from legitimate employment when assessing offender means. Additionally, HMRC would be expected to continue to use existing measures to identify and prevent non-legitimate employment.

60. Legal Aid Crown Court Means Test (CCMT)

- Under the CCMT scheme, defendants may be required to pay a contribution to their legal aid costs from income, and then, if convicted, from their capital assets. So, an offender convicted at the Crown Court could become liable to a Capital Contribution Order under CCMT at the same time as facing the criminal court charge. There is also the possibility that enforcement action may be pending against the offender for non-payment of an income contribution order. As the criminal courts charge is a priority charge and any enforcement would occur after this, it could have an impact on CCMT income.

61. Writing off the debt

- This policy presents a risk that there will be an accrual of debt from unpaid charges for HMCTS. In order to mitigate the risk of a amount of debt that is not possible to recover, there will be mechanisms in place to impair, write-off and cancel the debt where appropriate. This includes the power in the Bill for the courts to remit the charge where they are satisfied that collection and enforcement of the charge is impracticable. This will both limit the debt held by HMCTS and ensure that offenders are not disproportionately burdened with debt in relation to the crime they have committed.

62. HMCTS volume and cost interaction

- This analysis has not modelled the potential effects of the interaction between offender volumes and costs in the courts. The analysis has assumed that volumes into courts and the case mix are unchanged over time and has assumed that costs for each band are unchanged in real terms over time. In reality there are a number of factors including future policy changes that will affect either of these variables and the interaction of the two over time is complex.

- Policy changes may affect either or both of these variables. If the courts become more efficient the charges would need to reflect this. This would in turn reduce the amount charged and cash receipts from the criminal courts charge.
- Additionally, the effect of the extent to which cash revenues outweigh the costs of implementation and enforcement will be in part dependant on the extent to which efficiency savings can be made in the criminal courts can be matched by reductions in enforcement costs.

63. This analysis has not modelled any potential impacts of the recent reforms to the rules around enforcement agent fees introduced by the Government in response the the 'Transforming Bailiff Action' consultation, which are to be implemented in April 2014.

Additional potential impacts/sensitivities

Limiting the period for payments

64. After a certain period of time, provided that the offender has not reoffended and they have complied with the payment terms of their charge, the court will have the ability to cancel the remaining charge, and the offender will no longer be liable to pay back the outstanding amount of charge they owe.
65. The effect of this power has been estimated using model B. The analysis works on the basis of full compliance in repayments (this is also assumed in the baseline as data on individual payments in not available) so it overestimates the reduction in revenue resulting from limiting the payment period. It therefore only takes account of those who do not reoffend during the period. In practice, there will be some offenders who do not reoffend but fail to make payments as agreed and therefore will not be eligible to have their payment period limited.
66. Using a scenario based on low repayment rates for the charge and the lower set of charges the tables below estimate the potential reduction in revenue under arrange of periods after which offenders would no longer be required to make payments as long as they have met the two criteria:

Charges 1

Years after implementation	2 year	4 year	6 year
1	0%	0%	0%
2	0%	0%	0%
3	10%	0%	0%
4	20%	5%	0%
5	24%	10%	2%
6	27%	14%	7%
7	31%	16%	11%
8	32%	18%	14%
9	33%	19%	14%
10	33%	18%	14%

Charges 2

Years after implementation	2 year	4 year	6 year
1	0%	0%	0%
2	0%	0%	0%
3	10%	0%	0%
4	20%	5%	0%
5	24%	10%	2%
6	27%	14%	7%
7	31%	17%	11%

8	33%	18%	14%
9	33%	19%	15%
10	33%	19%	14%

Appeals

67. Offenders will be charged some of the cost of unsuccessful appeals, both in the Crown Court and the Court of Appeal. Based on analysis of current levels of unsuccessful appeals and an estimate of the likely levels of payment of those who appeal, initial estimates of the additional impacts of this are that this could lead to increased cash income of up to 1% of estimated overall net income.²⁷

Breach

68. Additionally offenders who fail to comply with their sentences will also be charged for certain breach hearings. Based on analysis of current breach rates and estimates of likely levels of payment of the cohort of offenders who breach court orders, initial estimates of the additional impacts of this are that this could lead to increased cash income of up to between 3% and 6% of estimated overall net income.

²⁷ Additionally Model A does not exclude cases that go on to have successful appeals from its estimates, but Model B does.

Post Implementation Review

Basis of the review

To review the implementation of the Criminal Courts Charging policy.

Review Objective

To monitor the implementation of the policy (including any challenges faced and lessons learned) and where possible analyse its financial impacts.

Review approach and rationale

This is a novel policy and while we have modelled potential impacts in the different ways set out in this Impact Assessment the exact impacts are uncertain. We therefore intend to review the policy a few years after implementation.

The review will look at the costs of set up and running of enforcement and the direct cash income from the policy. It is likely a process study will also be conducted to look at how the policy was implemented and any lessons learned.

Baseline

The costs and cash income baseline will be directly monitored.

Success Criteria

- that cash income from the criminal courts charge exceeds the costs of enforcement by the end of the review period; and
- that the criminal courts charge is not perceived to produce significant adverse consequences;

Monitoring Information arrangements

Monitoring information from HMCTS will be required to allow this review.

Reasons for not planning a PIR

N/A.

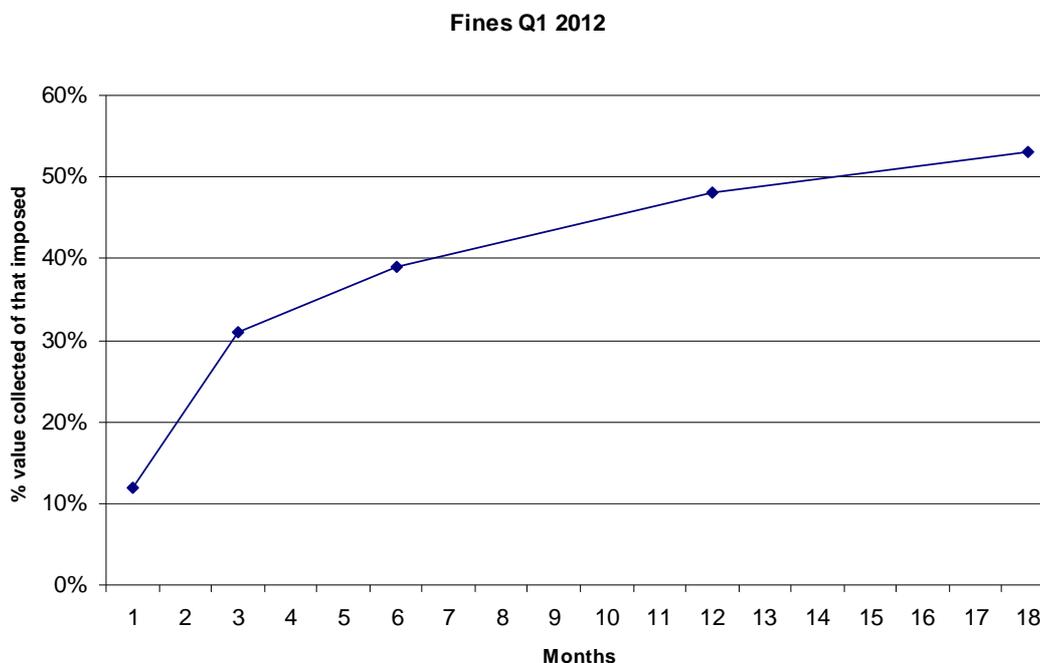
Annex A – Methodology for Model A

1. Model A estimates the potential cash inflows that this policy may generate using data on current fine impositions and amounts paid. This annex sets out the detail and methodology for estimating this.
2. The analysis is conducted by disposal type. These disposal types are fines, custodial sentences of less than 12 months, custodial sentences of 12 months to 4 years, determinate custodial sentences of greater than 4 years, suspended sentences, community sentences and a final disposal type covering those receiving absolute discharges, conditional discharges and otherwise dealt with.

Basis of the modelling

Fine impositions and amounts paid

3. The model uses as its basis data on fine impositions and amounts paid. Fine impositions and amounts paid are measured by value over various time increments. These have been calculated since Q2 2011²⁸.
4. The graph below shows the percentage of the amount imposed that was collected of those fines imposed in Q1 2012 over an 18 month period.



5. Data on fine impositions and amounts paid is only available over an 18 month period and the model assumes that this is the full extent of payment (although the model does assume additional delays before the 18 month payment period begins for offenders to pay off existing financial impositions first and for those who receive custodial sentences to be released). However, while payment appears to be tapering at the 18 month point, in practice there will be some payment beyond this period.

Adjusting data on fine impositions and amounts paid

6. The cohort of offenders receiving the criminal courts charge will be different to those currently receiving fines and the level of the charge will be on top of any other financial penalties the

²⁸CSQ July-September Table A2

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csqa-q3-2013-main-tables.xls

offender faces. Therefore a number of assumptions have been made to alter the amount of charge impositions that would be paid in attempt to be representative of the new offender cohorts who will be charged for criminal court costs.

7. It is anticipated that the amounts of charges paid would be affected by reoffending in two ways:
 - The first is that by imposing more than one charge on an offender is likely to reduce their ability to pay both charges as a whole, as the total amount to be paid would be greater.
 - Secondly, the payment of the criminal courts charge will be collected after compensation, Victim Surcharge, prosecution costs and fines. This means that if an offender re-offends before paying their criminal courts charge, any compensation, Victim Surcharge, prosecution costs or fines ordered for the second offence would be paid before the criminal courts charge for the first offence. The increase in the total amount of financial impositions combined the fact that the criminal courts charge will be collected after other financial impositions means that reoffending is likely to reduce the ability for offenders to pay court cost charges.
8. Given this, the fine amounts paid are therefore adjusted to try to take account of the different level of reoffending rates between offenders receiving different disposals. The one year average number of re-offences per offender (the frequency rate) for 2011 is used as a proxy to do this. These are calculated relative to the reoffending rate for fines.
9. Additionally, the imposition of the criminal courts charge in addition to any compensation, Victim Surcharge, prosecution costs or fines would increase the average level of financial impositions on an offender. This is likely to reduce the offender's ability to pay the total sum they are ordered to pay. In order to account for this, the proportion of increase is calculated by estimating current and future average financial imposition levels for offenders receiving each disposal type. The observed change in the amount of Victim Surcharge paid before and after the recent increase in Victim Surcharge²⁹ is then used to estimate the possible reduction in the amounts paid following the increase in average financial impositions.

Estimated profile of cash inflow collection

10. To profile the potential cash inflows:
 - April 2015 commencement date is assumed.
 - Only offences committed after the commencement date would be eligible, so a delay to take account of the time between the offence being committed and completion of the case has been included. The mean number of days from offence to completion has therefore been added to the commencement date to estimate the time at which payment begins, this was 159 days for all cases in Q3 2013³⁰. This has been rounded to 5 months.
11. Therefore based on these assumptions, the start date modelled for cash inflow collection would be September 2015 for those who do not receive custodial sentences. For those that do receive custodial sentences, an additional delay before payment starts is calculated, based on an assumed release date, for the purpose of the model, of 50% of the weighted average sentence³¹.

²⁹ The 3 month victim surcharge payment rate fell by 19% between Q2 2012 and q2 2013.

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls)

All offences committed after October 2012 were subject to an increased level of victims surcharge. As well as increasing the level of surcharge received it was also expanded to a wider group of offenders. Both of these factors may affect payment rates. It is not possible to disentangle the effect of the increased level and expanded group on victims surcharge from any other factors affecting the level of payment. However, the observed difference has been used a proxy to estimate the potential impact.

³⁰ Excludes breaches and cases with an offence to completion time greater than 10 years. Statistics are sourced from the CREST linked court data and included around 95% of completed cases. Only one offence is counted for each defendant in the case. If two or more cases complete on the same day, the case with the longest duration is included.

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls#3.8!A1)

³¹ Data on sentence length is obtained from the following source:

Table Q5.6 - Persons sentenced to immediate custody at all courts by length of sentence and average custodial sentence length(1), 12 months ending September 2002 to 12 months ending September 2012(2)

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/172778/Chapter-5-sentencing-sept12.xls.xls . Note that a sentence of '4 years plus' assumes a maximum sentence of 15 years.

12. An additional delay has been added to account for the time taken to pay other financial impositions. Calculation of the period of time taken for payment of other financial impositions has been estimated by calculating the mean level of financial impositions (compensation, Victim Surcharge, fines and estimated prosecutor costs) for each disposal type, based on 2012 data³². These delays shift the estimated charges paid curves to the right by the number of months of lags.

Modelling

13. The inputs and assumptions explained above are used to form a methodology which profiles a monthly inflow of offenders for each disposal type. It is assumed that there is no seasonality so monthly inflows represent a twelfth of the annual volume. The delays described above are applied to each monthly cohort and cash inflow is calculated using the adjusted data on fine impositions and amounts paid as explained above.

Assumptions

Inflation/interest

14. The modelling assumes that charge levels and offenders outstanding debts increase with inflation. The Lord Chancellor will have the power to make regulations to require offenders to pay interest at the rate of inflation on unpaid charges.

Optimism bias

15. This is the systematic tendency for appraisals to be overly optimistic about the magnitude of a project's net benefits. The simplest way to limit this 'optimism bias' in economic appraisals is to increase the estimated costs and/or decrease the estimated benefits by a certain proportion.
16. An optimism bias of 20% has therefore been applied to cash inflow estimates due to the large number of assumptions within the model and limitations of data available.

Enforcement

17. The model does not estimate costs of enforcement. This has to be estimated outside of the model.

Appeals

18. Charges issued and cash inflow collected from appeals has not been calculated in this model. Additionally, cases that go on to have successful appeals have not been excluded.

³² These are then converted into months of average delay by applying a month of delay for each £50 in value.

Annex B – Methodology for Model B

1. Model B estimates the potential cash inflows that this policy may generate using data on offenders' incomes in conjunction with fixed rules determining monthly payments amounts based on income levels and benefit status. This annex sets out the detail and methodology for estimating this.

Basis of the modelling

2. Model B is based on provisional data from the new MoJ /DWP/HMRC analytical data share which includes PNC data as well as information on offenders' benefit³³ () and P45 employment and P14 income status for those offenders who were successfully matched to DWP / HMRC data.³⁴The model takes offenders convicted in Crown and Magistrates Courts in 2003/04 based on Police National Computer (PNC) data and uses provisional data from the new MOJ /DWP/ HMRC analytical data share to map their gross annual earnings for the following 9 years (2003/04-2012/13)³⁵. Earnings are then inflated to reflect 2013/14 wage rates.
3. The model then uses a sample of around 12,000 convicted offenders³⁶ from the aforementioned MOJ/DWP/ HMRC linked data to determine the sentencing court venue (Magistrates or Crown) and the offence category (indictable, summary motoring or Summary non motoring) for each convicted offender.
4. The model then uses simulation to estimate the plea and the trial court venue (as well as the sentencing outcome including the custodial sentence length in the case of those given custodial sentences). It uses this to determine the charging band within which the offender would fall.

Model specifics

Other Financial penalties

5. The majority of offenders are given a fine as a sentencing disposal, along with other financial impositions such as compensation orders and Victim Surcharge which must be paid before people start to pay off their criminal court charges.
6. In order to incorporate this requirement to pay off other financial penalties prior to the criminal court charge, the model calculates the total financial penalty to be paid by each individual based on the person's sentencing disposal. It assumes that these financial penalties are repaid using the same rules as the criminal courts charges. It therefore simply adds the sum of the financial penalties to the criminal courts charge and determines at what point the financial penalties have been fully paid based on people's earnings and benefits. Only at that point at which all financial penalties have been paid off does it consider money repaid as contributing to paying court costs charges.

Custodial Sentences

³³ The data covers Jobseeker's Allowance, Employment and Support Allowance, Incapacity Benefit which no longer exists and was replaced by Employment and Support Allowance, Income Support, and Pension Credit.

³⁴ The employment / income data only covers P45 employment and P14 income, and may underestimate the proportion of offenders in P45 employment.

³⁵ This data set only includes offenders with PNC records who were successfully matched to DWP /HMRC data. Overall, around 80% of PNC individuals were matched. We do not know the benefit or employment status of those offenders who weren't matched to DWP/HMRC data – this could be due to data quality issues, or the fact that those offenders were not in P45 employment or claiming benefits. The earnings information is P14 income data from HMRC. P14 records are end of year income records that employers send to HMRC. P14 records are only required for employments where the National Insurance lower earnings limit has been exceeded, therefore the P14 data will exclude some income below this limit. P14 and P45 data does not include self employment income or income from cash in hand work. Further information on the analytical data share is available in the statistical publication: " Experimental statistics from the 2013 MoJ /DWP /HMRC data share"

<https://www.gov.uk/government/publications/experimental-statistics-from-the-2013-moj-dwp-hmrc-data-share>

³⁶ These 12,000 convicted offenders have the same mix of trial court venues, offence categories and disposals as the latest 2012/13 convicted offender population.

7. Those convicted offenders with custodial sentences are assumed to only start paying off their charges once released from prison. The model therefore calculates an additional delay for everyone with a custodial sentence equal to 50% of the offender's custodial sentence.

Reconvictions

8. Using the linked data, a picture is built up of the number of previous convictions that each individual would have accumulated at the time of the latest conviction. Using the charges to be imposed and information on these previous convictions, a charge is estimated for each of these previous convictions. This analysis is done for each of the ten annual cohorts.
9. For every person in the cohort, simulation is then used to estimate their accumulated charges from previous offences. It is then assumed that they would have paid off some of these previous charges at a rate governed by their first year earnings/benefits. These assumptions allow for an estimate to be made of the outstanding previous charges.
10. These outstanding debts are then added to the amount (along with other financial impositions) that is required to be paid off before the offender could begin to pay off their court cost charge.

Appeals

11. Those who successfully appeal against their convictions will have their court charges withdrawn. The model does not explicitly know which convicted offenders have recently had convictions overturned. It therefore uses knowledge of the overall percentage of people who have had successful appeals to simulate this for the cohort of convicted offenders. It then sets the charges of those with simulated successful appeals to zero.

Estimated profile of cash inflow collection

12. Only convictions based on offences committed after the implementation date used in the model of April 2015 result in charges being imposed. The model therefore uses the average time from offence to completion to estimate the proportion of convicted offenders who are liable for the charge in the first year. There are different average times based on offence category, court and plea.

Modelling

13. In summary this criminal court costs model works by following a cohort of offenders who have been convicted in a given year over a ten year period. They pay off their court charges at a rate governed by their earnings/benefits. The following paragraphs set out the methodology in more detail.
14. For the first cohort of 12,000 offenders, the model converts their gross earnings into net earnings using the latest generic tax/National Insurance calculations. It then calculates how much each person who is earning should pay each year based on their earnings using a set of rules established for Attachment of Earnings (See Annex B.i for table showing monthly net earnings and associated percentage deductions to be made from those earnings).
15. For those on benefits, the linked data is used to estimate the number of days in a year on which they were on benefits and the model then converts this into the number of months on benefits. It uses a fixed monthly amount (governed by the choice of scenario being modelled) to be deducted from benefits to obtain the total amount deducted from benefits over a year.
16. The model contains each individual's gross earnings over 10 years after their conviction, so the model can subsequently increase/decrease the payment amount each year as incomes increase/decrease. Similarly it would adjust the deductions for those moving from earnings to benefits or vice versa.

17. For the first cohort of offenders, the model looks at the total paid in the first year and calculates if there is still a debt to be paid off. If there is an outstanding debt, it recalculates the amount to be paid in the next year based on the earnings/benefits in that year. At the end of that next year it again determines if there is an outstanding debt. The model continues until either the debt is completely paid off or ten years have elapsed.
18. The model then assumes that each subsequent annual cohort of convicted offenders will be exactly the same as the first cohort in terms of volume, court mix and offence category mix. It also assumes that these following annual cohorts will have the same post conviction earnings and benefits profile as the first cohort.
19. The model as described above is then run under the 2 following scenarios for the case in which charges are based on estimated charges 1 and charges 2:
 - Each person on benefits pays £24 a month and non-matched ³⁷offenders pay an average amount towards the criminal court charge.
 - Each person on benefits pays £12 a month and non-matched offenders pay nothing towards court cost charges.

Assumptions

General

20. It is assumed that historic earnings accurately reflect post implementation earnings. Similarly it assumes historic numbers on benefits accurately reflect post implementation numbers on benefits.
21. We know that, in reality, some offenders will not comply with payments, but this model is based on income so it works on the basis that everybody pays their stipulated monthly amount on time.
22. It is assumed that anyone who is both on benefits and earning income at the same time will have court cost charges deducted only from their earnings.
23. The model assumes that it is possible to identify changes in offender incomes/benefits and therefore the charges can be changed accordingly to reflect this. In practice, HMCTS will not always be aware of changes in offender incomes or benefits.
24. The model explicitly considers the impact of offenders who as a result of paying charges from previous convictions might be delayed in paying charges for their latest conviction.
25. The model does not consider the impact of criminal courts charge payments being interrupted as offenders pay fines/ financial impositions for future convictions. It is therefore possible that the charges may take longer to pay in practice.
26. The model assumes that there will be no lag between convictions and payments unless the delay is due to payment of fines / financial impositions or time in custody.
27. The model does not account for those who might make upfront payments.
28. The model does not account for fines officers' powers to vary repayment rates for offenders who have defaulted on their charge.
29. The model uses a sample of Police National Computer (PNC) data which contains the more serious convictions (approximately around 43% of all convictions). The model assumes that the less serious offences in the PNC sample are the same as non-PNC data in terms of

³⁷ Non matched refers to those convicted offenders for whom we were unable to find a match on HMRC / DWP datasets and therefore we have no linked data on their incomes or benefits

earnings and benefits and reconvictions.

30. For the magistrates data, only one offence is available for each defendant in a case. If two or more cases complete on the same day, the offence with the longest duration (charge/laying of information to completion) is available. The proportion of convictions where the plea was not guilty was determined on the basis of that one offence.

Inflation/interest

19. The modelling assumes that charges, earnings and offenders debts increase with inflation. The Lord Chancellor will have the power to make regulations to require offenders to pay interest at the rate of inflation on unpaid charges.

Optimism bias

20. This is the systematic tendency for appraisals to be overly optimistic about the magnitude of a project's net benefits. The simplest way to limit optimism bias in economic appraisals is to increase the estimated costs and/or decrease the estimated benefits by a certain proportion.
21. An optimism bias of 20% has therefore been applied to cash inflow estimates due to the large number of assumptions within the model and limitations of data available.

Annex B.i – Deductions to be made from an attachment of earnings order³⁸

Net monthly earnings	Deduction rate
Not exceeding £220	0%
Exceeding £220 but not exceeding £400	3%
Exceeding £400 but not exceeding £540	5%
Exceeding £540 but not exceeding £660	7%
Exceeding £660 but not exceeding £1040	12%
Exceeding £1040 but not exceeding £1480	17%
Exceeding £1480	17% in respect of the first £1480 and 50% in respect of the remainder

³⁸ Her Majesty's Courts Services (2008) *Attachment Orders: A guide for employers*, p.30.

Annex C – Debt accrual

1. It is expected that this policy would lead to additional debts being accrued by HMCTS. As it is likely that much of the debt will not be paid off straight away and some debt will not be paid at all, there will be an increase in the accrual of debt within the first few years of the policy as there will be a delay between the charge being imposed, cash flows being realised and debt being written off and cancelled.
2. The table below shows how the level of debt may build up by 2019/20, based on estimated level of impositions and cash income and assuming no write off or cancellation:

Estimates debt accrual under charges 1 (rounded to the nearest £100m) without any write off/cancellation in real terms

		<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>	<u>2018/19</u>	<u>2019/20</u>
Model A		£0m	£0m	£100m	£300m	£500m	£700m	£800m
Model B	Upper	£0m	£0m	£100m	£300m	£500m	£600m	£700m
	Lower	£0m	£0m	£100m	£300m	£500m	£700m	£900m

Estimates debt accrual under charges 2 (rounded to the nearest £100m) without any write off/cancellation in real terms

		<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>	<u>2018/19</u>	<u>2019/20</u>
Model A		£0m	£0m	£200m	£400m	£600m	£800m	£1,000m
Model B	Upper	£0m	£0m	£200m	£400m	£600m	£700m	£800m
	Lower	£0m	£0m	£200m	£400m	£600m	£800m	£1,000m

3. Based on this modelling, it is therefore estimated that the increase in debt as a result of the policy would be between £700m and £1,000m by 2019/20 without any cancellation.
4. These estimates are subject to change and may be affected by a range of factors. In particular, they do not reflect a number of aspects of the Bill which in practice are expected to limit the level of debt accrued. The Bill includes powers for the court to cancel outstanding charges in certain circumstances. When offenders have desisted from offending and made regular payments of the charge for a certain amount of time, their debt may be cancelled by the Court. Courts will also have the power to cancel the charge after a specified period of time if it is unforceable