

# **CRIMINAL JUSTICE AND IMMIGRATION BILL REGULATORY IMPACT ASSESSMENTS**

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# **CRIMINAL JUSTICE AND IMMIGRATION BILL OVERARCHING REGULATORY IMPACT ASSESSMENT**

## **1. Criminal Justice and Immigration Bill**

This is the overarching Regulatory Impact Assessment (RIA) for the Criminal Justice and Immigration Bill which has been developed to provide an overview of the benefits, costs and savings provided by the Bill.

Individual RIAs have been developed in accordance with best practice on those parts of the Bill which have indicated particular impacts in terms of costs and benefits.

## **2. Purpose and intended effect**

### **Objective**

The objective of the Bill is to reduce re-offending and protect the public, provide justice for all and increase confidence in the justice system.

The Bill will deliver the overall objective by:

- building public confidence in the sentencing framework by imprisoning serious and dangerous offenders while others receive tough and effective community sentences;
- ensuring that prison and probation resources are targeted at serious and violent offenders;
- strengthening the protection of the public from violent offenders;
- strengthening the pre-court and community penalties available for young offenders so that, wherever possible, offending by children and young persons is effectively addressed without the need to resort to custody;
- ensuring that the police and their community safety partners have appropriate powers to tackle anti-social behaviour at its roots and thereby reinforce a culture of respect;
- ensuring that the UK does not provide a safe haven for foreign criminals and terrorists and send a clear signal that such people cannot expect to secure a settled status in this country; and
- outlawing the possession of extreme pornography.

### **Devolution**

All of the Bill's provisions extend to England, or England and Wales, while certain provisions also extend to Scotland and Northern Ireland.

### **Background**

The Government has changed the face of penal policy over the last ten years by

- recognising the need to intervene as early as possible to prevent children who might drift into crime from doing so;
- developing interventions in the Youth Justice System that aim to reduce the chances of re-offending;
- focusing policy on ensuring that the dangerous offender remains in prison until he or she ceases to be a danger;

- Giving the law enforcement authorities the tools to bear down on anti-social behaviour;
- Increasing the range of punishments available;
- Recognising the need to do all we can to reduce re-offending – by massively increasing drug treatments and offending behaviour interventions; more work with offenders in prison and on release, tougher community penalties, more unpaid work, more restorative justice and greater monitoring and support for those who have offended when they are in the community, in particular through the introduction of the Multi-Agency Public Protection Arrangements.

This shift in policy is beginning to show results, with proven re-offending rates falling by around two per cent between 2000 and 2004 for adult and young offenders, increased number of dangerous offenders off the streets, and a resultant contribution to reduction in crime. The proposals in this Bill are part of this ongoing work.

#### Youth Rehabilitation Order

- The Bill creates a new statutory community sentence for young offenders. The Youth Rehabilitation Order (YRO) would be available as a sentence for all suitable offenders aged under 18 when convicted of an offence.
- It would replace nine existing juvenile community sentences with a single generic sentence. This will consist of a menu of interventions including programmes, reparation, treatment for mental health issues and drug misuse, supervision and curfew, which the court can choose from to meet the needs of the individual offender.

#### Modification of power to make Referral Order

- The Bill extends the circumstances in which a court may make a Referral Order. When a child or young person is given a referral order, he or she is required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a youth offending team (YOT). The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.
- To help nip low level offending in the bud referral orders will be made more widely available by providing that an order may be made where the offender has previously been bound over or where the offender has had one previous conviction and where, in respect of that previous conviction, a referral order had not been made.

#### Access by Her Majesty's Court Service (HMCS) to Department of Work and Pensions (DWP) records

- The Bill includes provisions to allow HMCS enforcement staff access to offenders' benefit status to determine if a deduction from benefit (DB) order is the appropriate intervention.

### Prison and Probation Ombudsman

- The Bill places the Prisons and Probation Ombudsman (PPO) on a statutory basis.
- This will provide an enhanced structure for:
  - adjudication of complaints from offenders and immigration detainees;
  - scrutiny of deaths of prisoners, young persons detained in Young Offender Institutions, residents of approved premises and those in immigration detention accommodation;
  - supporting the Coroner's inquest in fulfilling the investigative obligation arising under Article 2 of the European Convention on Human Rights in relation to such deaths; and
  - investigation of particular incidents or matters of concern on request by the Secretary of State.

### Youth Conditional Caution

- The conditional caution is a pre-court disposal administered by the Police following review of the case by the Crown Prosecution Service. It allows an offender to be given a caution, rather than face prosecution, on condition that he or she complies with agreed requirements. Failure to comply usually results in prosecution for the original offence.
- The Bill extends the adult conditional caution scheme to young people aged 16 and 17.

### Inclusion of cautions etc in Rehabilitation of Offenders Act 1974

- The aim of the Rehabilitation of Offenders Act 1974 is to help former offenders to fully reintegrate into society by ensuring that their criminal convictions are, in effect, expunged from their record after an appropriate interval. Under the Act, following a certain period of time, all convictions (except those resulting in prison sentences over 30 months) are regarded as "spent". As a result the offender's record is wiped clean and they are regarded as rehabilitated. For most purposes a rehabilitated person is treated as if they had never committed an offence and, as such, they are not obliged to declare them, for example, when applying for a job.
- The 1974 Act currently does not apply to warnings, reprimands, simple cautions and conditional cautions; the Bill rectifies this omission. Warnings, reprimands and simple cautions will become "spent" immediately, while conditional cautions will become "spent" after 3 months.

### Extension of powers of CPS designated caseworkers

- The Bill seeks to remove certain statutory exceptions which currently limit the types of case and hearing in which the Crown Prosecution Service (CPS) Designated Caseworker (DCW) may be the advocate, thereby extending their remit to prosecute a wider range of offences in the magistrates' courts.
- This approach enables CPS lawyers to focus more effectively on the provision of advice and focus on more serious prosecutions before the Crown Court.

### Criminal Legal Aid

- The Bill makes amendments to provisions on criminal legal aid in the Access to Justice Act 1999:
  - to make it possible for a right to representation to be granted at an earlier stage;
  - to widen the power to pilot schemes; and
  - to make it easier to obtain information from government departments for the purposes of means testing via a statutory gateway.

### Miscarriages of Justice compensation

- To complete the implementation of the programme of reform of the arrangements for paying compensation in cases of miscarriage of justice, the Bill introduces an overall cap of £500,000 for awards of compensation, which is still a very significant sum.
- It also extends the Assessor's power to make deductions because of conduct and convictions from the whole of the award, with the possibility of the award being reduced to a nominal payment in exceptional cases. It also makes provision to provide that the maximum recoverable for loss of earnings to be 1.5 times the median gross annual earnings, the same as for compensation paid to victims of crime.
- The Bill introduces a 2 year time limit for the acceptance of applications (save in exceptional circumstances).

### Extreme pornographic material

- The Bill seeks to make the possession of extreme pornographic material an offence. It is already an offence to publish or distribute such material.
- There is now some evidence that, with the development of the Internet, the boundaries of the type of pornographic material available are being pushed back with more extreme images being sought.

### Prostitution

- The Bill introduces a new sentence, as an alternative to a fine for those convicted of loitering or soliciting order.
- The new order will:
  - encourage and enable persons involved in prostitution to address the causes of their offending, and thereby find a way out;
  - achieve an overall reduction in street prostitution; and
  - improve the safety and quality of life of communities affected by street prostitution, including those individuals directly involved in street sex markets.
- The Government acknowledges that the offence of loitering or soliciting for the purposes of prostitution has been widely criticised for not reducing re-offending.

### Increase in penalties for misuse of personal data

- The Bill aims to deter more effectively the wilful misuse of personal data by adding to the current financial sanctions a more severe but proportionate custodial sentence.
- This will help increase public confidence in the sharing of personal data in the interests of legitimate activity including efficient Government.

### Violent Offender Orders

- The Bill introduces a civil order to better manage the risk posed by those who have been convicted of serious violent offences, by enabling courts to impose conditions on them after they have reached the end of their sentence.

### Premises Closure Orders

- The Bill introduces a new power for the police and local authorities to apply for a court order to close and seal, for a set period, a property at the centre of significant and persistent disorder, regardless of tenure.

### Offence of creating nuisance/disturbance on hospital premises

- The Bill seeks to create a new offence of creating nuisance or disturbance on NHS premises, together with a power of removal.
- This will allow the NHS to deal more effectively with incidents of nuisance and disturbance and create a better working environment for staff.

### Statutory one year review of juvenile Anti-social Behaviour Orders (ASBOs)

- Current Home Office guidance on the use of ASBOs against children and young people recommends that applicant authorities carry out an assessment after one year to review the offenders' progress towards compliance with the order, with a view to varying it if circumstances warrant such a course.
- This is good practice and this Bill makes this a statutory requirement.

### New police misconduct procedures

- The Bill enables revised policies for dealing with allegations of misconduct against police officers and on dealing with unsatisfactory performance and attendance in the police service.
- The Taylor Report recommended that a new set of standards/code of ethics should be developed and that whilst any new system should continue to be regulated, the new procedures should be based on good employment practice and in particular adheres to ACAS principles.

### Special Immigration Status

- To send a clear signal that foreign criminals and terrorists cannot expect to secure a settled status in this country, the Bill creates a new, special immigration status, for some individuals without the right of abode in the United Kingdom.
- The provision will allow for reporting and residency conditions, and will deny those with this special status access to employment and to mainstream benefits. Instead, those who are destitute will be supported by the Border and Immigration Agency.

## **Rationale for Government Intervention**

The measures set out above are essential to improve the justice system for the public. This improvement will be measured by better outcomes in penal policy; fewer offenders re-offending; more effective public protection from dangerous offenders; a system where the public have confidence that the punishment fits the crime; and a system more connected to the communities it serves; a system that victims believe understands and looks after them.

### **3. Consultation**

#### **Within Government**

Consultation on these provisions has taken place with the Office of Criminal Justice Reform (OCJR), Home Office, Ministry of Defence, Northern Ireland Office, the Attorney General's Office and the Parole Board.

#### **Public consultation**

Many of the provisions were included in the following documents:

- 'Penal Policy – a background paper', Ministry of Justice, 9 May 2007
- 'Youth Justice – The Next Steps', Home Office, 8 September 2003
- 'Strengthening powers to tackle anti-social behaviour: Consultation Paper', Home Office, November 2006
- 'Tackling nuisance or disturbance behaviour on NHS healthcare premises: a paper for consultation', Department of Health, June 2006
- 'Consultation on the possession of extreme pornographic material', Home Office April 2005
- 'Paying the price: a consultation on prostitution', Home Office, July 2004
- 'Increasing penalties for deliberate and wilful misuse of personal data: Consultation Paper', Department for Constitutional Affairs July 2006
- 'Home Office policy document on Violent Offender Orders', Home Office, April 2007.

### **4. Options**

- Retain the current position and not introduce the changes outlined in the Bill – this would mean that the necessary structural changes and powers are not in place to ensure that prison and probation resources are targeted at serious and violent offenders.
- Implement in part – to do this might enable some of the developments we seek to make to the criminal justice system, but would not realise the full benefits from the proposed reforms.
- Implement in full – would allow us to move forward on building public confidence in the sentencing framework, strengthening the protection of the public from violent offenders, strengthening the pre-court and community penalties available for young offenders; and ensuring that the police and local authorities have appropriate powers to tackle anti-social behaviour at its roots.

It is recommended that the measures in the Bill are taken forward in their entirety in order to realise all the benefits we seek to introduce.

#### **Benefits and Costs**

Benefits and costs are shown in the table attached at Annex A and the benefits of each area are discussed in greater detail in each individual RIA.



## **Sectors and Groups affected**

The provisions of the Bill impact mainly on the public sector (primarily the police, courts and other agencies within the criminal justice system). Where the private and voluntary sectors will be engaged, the business sectors affected are: providers of legal services, providers of offender management services, including custodial establishments; internet service providers and others who unknowingly distribute extreme pornographic material; holders of personal data; and commercial owners or occupiers of premises that may be subject to a premises closure order. The Bill is not intended to create additional burdens for the private sector.

Many of the measures in the Bill will directly impact on legal aid expenditure. This is set out in individual RIAs.

Equality and diversity impacts have been assessed and, where appropriate, Equality Impact Assessments have been produced in respect of particular measures in the Bill.

### **6. Small Firms Impact Test**

The small firms which may be affected are those in the following business sectors: providers of offender management services; internet service providers and others who unknowingly distribute extreme pornographic material; holders of personal data; and commercial owners or occupiers of premises that may be subject to a premises closure order.

### **7. Competition assessment**

The competition assessments are dealt with under the individual RIAs.

### **8. Enforcement, sanctions and monitoring**

Enforcement and sanctions are dealt with under the individual RIAs.

### **9. Implementation and delivery plan**

Implementation and delivery plans for the individual measures in the Bill will be developed as required.

### **10. Post-implementation review**

The component parts of the legislation will be reviewed to check that they are fully effective.

### **11. Summary and recommendation**

It is recommended that the Government's preferred options are taken forward in the Criminal Justice and Immigration Bill.

## **Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Rt Hon David Hanson MP  
Minister of State  
Ministry of Justice  
June 2007**

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## ANNEX A

	Key Benefits of Preferred Option	Costs
Youth Rehabilitation Orders	<ul style="list-style-type: none"> <li>• A more risk based approach to sentencing young offenders which will focus on individual need such as treatment for substance misuse, education and curfews while also addressing offending behaviour.</li> <li>• The YRO may lead to a reduction in the use of custody for young offenders, particularly those offenders who would benefit from early and intensive supervision in the community rather than in custody.</li> <li>• There are wider benefits to society as the magnitude and quantity of crimes by offenders who complete the programme are reduced.</li> </ul>	There will be one off training costs to the Youth Justice Board of £669,000 to train Youth Offending Team members.
Modification of power to make Referral Order	<ul style="list-style-type: none"> <li>• Referral orders perform significantly better than alternative disposals, and it is therefore reasonable to predict that the additional referral orders made as a result of the new discretionary powers will reduce reconvictions.</li> <li>• Saving to Youth Offending Teams of £194K a year.</li> </ul>	

<p>HMCS access to DWP records</p>	<ul style="list-style-type: none"> <li>• Making these necessary changes and providing the courts with access to benefits information before they engage Department for Work and Pensions (DWP) has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.</li> <li>• We estimate this link will lead to a 40% to 45% drop in the number of unsuccessful applications for deduction from benefit orders. This therefore has the potential to bring efficiency gains to both departments.</li> </ul>	<p>There will be two costs to HMCS to increase access to show benefit status:</p> <ul style="list-style-type: none"> <li>• HMCS would incur a one off cost for development to upgrade the current HMCS access of personal information screen to include access to benefit information.</li> <li>• HMCS will pay DWP for the number of accesses made by courts staff to view the benefit status of an offender.</li> </ul> <p>HMCS is currently working with DWP and their IT service provider to ascertain these costs.</p>
<p>Prison and Probation Ombudsman</p>	<ul style="list-style-type: none"> <li>• A statutory Prison and Probation Ombudsman will possess enhanced independence and status in law. There will be a clear legal distinction between the Commissioner for Offender Management and Prisons and the Secretary of State and the fundamentals of his remit will be enshrined in legislation.</li> </ul>	<p>This proposal will not incur any additional costs. Adequate resources have been made available to the Prisons and Probation Ombudsman to perform the functions that will be placed on a statutory footing.</p>

Youth Conditional Caution	<ul style="list-style-type: none"><li>• Courts will be trying fewer young offenders for low-level offences.</li><li>• The Crown Prosecution Service will spend less time administering a Conditional Caution compared with pursuing a case through the court.</li><li>• Young offenders will have an opportunity to make amends for their offending behaviour and seek help for underlying causes without the stigma of a criminal conviction.</li><li>• Victims and witnesses will see the offence brought to justice and the offender held to account sooner. Victims will also get compensation sooner and will have the opportunity to take part in a Restorative Justice conference, which research suggests can be very effective in enabling the victim to 'move on'</li><li>• The total savings from the introduction of youth conditional cautions is £489K per year.</li></ul>	
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<p>Extension of powers of CPS designated caseworkers</p>	<ul style="list-style-type: none"> <li>• Maximum flexibility to allow optimisation of staff deployment across the courts.</li> <li>• Improve case building process with lawyers focused on sensitive / complex casework and able to deliver CJS initiatives such as CJSSS and pre-court diversion.</li> <li>• Minimal need for lawyers in the magistrates courts with optimisation of efficiency savings across the board.</li> <li>• A saving to the CPS of £5m a year.</li> </ul>	
<p>Criminal Legal Aid</p>	<ul style="list-style-type: none"> <li>• Facilitate and improve the existing process by which an individual applies for and is granted the right to criminal legal aid representation.</li> </ul>	<p>Costs to the Legal Services Commission associated with establishing the new statutory gateway will be no more than £1 million.</p>
<p>Miscarriages of Justice Compensation</p>	<ul style="list-style-type: none"> <li>• Fairer, simpler and swifter system</li> <li>• Brings about a better balance with compensation for victims of crime</li> <li>• Makes more appropriate recognition of applicants other criminal convictions</li> <li>• Savings of around £2.5 million a year, which will be ploughed back to support victims of crime.</li> </ul>	

<p>Extreme Pornographic material</p>	<ul style="list-style-type: none"> <li>• Helps to protect society, particularly children, from exposure to such material, to which access is increasingly difficult to control.</li> <li>• Enable the enforcement authorities to take action against individuals who, by procuring such material by whatever means, encourage its further production.</li> </ul>	<p>The annual costs of the new offence are estimated as</p> <table border="0"> <tr> <td>Police</td> <td>£11K</td> </tr> <tr> <td>Crown Prosecution Service</td> <td>£65K</td> </tr> <tr> <td>Legal Aid Costs</td> <td>£128K</td> </tr> <tr> <td>HMCS</td> <td>£200K</td> </tr> <tr> <td>NOMS</td> <td>£20K</td> </tr> </table> <p>And an increase of 7 prison places.</p>	Police	£11K	Crown Prosecution Service	£65K	Legal Aid Costs	£128K	HMCS	£200K	NOMS	£20K
Police	£11K											
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<p>Prostitution</p>	<ul style="list-style-type: none"> <li>• Reduction of the numbers involved in street prostitution</li> <li>• Reduction in violence, poor health, drug misuse and neighbourhood nuisance associated with street prostitution</li> <li>• Total benefits outweigh the costs with a net benefit of £2.8m in the first five years of the order.</li> </ul>											
<p>Increasing penalties for deliberate and wilful misuse of personal data</p>	<ul style="list-style-type: none"> <li>• There is growing public concern about the misuse of personal data.</li> <li>• Increasing the penalty for this offence will provide public reassurance that the Government is serious about protecting people from crime and upholding the individual's right to an appropriate degree of privacy.</li> </ul>	<p>The annual cost of the new penalty is</p> <ul style="list-style-type: none"> <li>• £16K to the Legal Services Commission</li> </ul> <p>And an additional prison place per annum</p>										

Violent Offender Orders	<ul style="list-style-type: none"> <li>Violent Offender Orders will better protect the public from dangerous and violent offenders by ensuring they continue to be subject to conditions designed to manage or reduce risk, after the end of their sentence.</li> </ul>	<p>Court costs over the first three years are estimated at approximately £218K, legal aid costs at approximately £857K, and CPS costs at approximately £197K.</p> <p>The total annual cost to the police, nationally, is estimated at £725K.</p> <p>Breach of a Violent Offender Order will be a criminal offence. It is estimated that this will have an average impact of 20 prison places per year.</p>								
Premises Closure Orders	<ul style="list-style-type: none"> <li>Gives the police and local authorities an opportunity to act swiftly and decisively to control nuisance behaviour and offer some respite to suffering neighbours.</li> <li>Provides an opportunity through which to engage the perpetrators in support and rehabilitation which they may have refused until that point.</li> <li>the use of the power will send a positive signal that anti-social behaviour will be tackled and not tolerated across all housing and property tenures and that the protection of the wider community is paramount.</li> <li>It will allow some respite for the neighbourhood and encourage visitors and business back in to the area.</li> </ul>	<p>The annual cost of an estimated 100 closure orders a year is</p> <table data-bbox="1375 799 1951 943"> <tr> <td>Police</td> <td>£135K</td> </tr> <tr> <td>Local Authorities</td> <td>£250K</td> </tr> <tr> <td>HMCS</td> <td>£49K</td> </tr> <tr> <td>Legal Services Commission</td> <td>£292K</td> </tr> </table>	Police	£135K	Local Authorities	£250K	HMCS	£49K	Legal Services Commission	£292K
Police	£135K									
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HMCS	£49K									
Legal Services Commission	£292K									



<p>Offence of creating nuisance/disturbance on NHS premises</p>	<ul style="list-style-type: none"> <li>• Staff are able to carry out their duties unhindered by incidents of nuisance and disturbance.</li> <li>• An improvement in absenteeism, morale, recruitment and retention.</li> <li>• Prevention of more serious incidents.</li> </ul>	<p>The annual costs of the new offence are estimated as</p> <ul style="list-style-type: none"> <li>• £363K cost to police</li> <li>• £701K cost to HMCS</li> <li>• £174K cost to CPS</li> <li>• £75K cost to LSC</li> </ul> <p>There is also a £270K training cost to NHS.</p>				
<p>Statutory one year review of juvenile Anti Social Behaviour Orders (ASBOs)</p>	<ul style="list-style-type: none"> <li>• For young people, a one year review is an important safeguard that will ensure that they are receiving the support they need to prevent them breaching the terms of their ASBO and causing further harm to the community.</li> </ul>	<p>The annual cost of additional court hearings to vary prohibitions or discharge orders following review is estimated at</p> <table border="0"> <tr> <td>HMCS</td> <td style="text-align: right;">£41K</td> </tr> <tr> <td>Legal Services Commission</td> <td style="text-align: right;">£72K</td> </tr> </table>	HMCS	£41K	Legal Services Commission	£72K
HMCS	£41K					
Legal Services Commission	£72K					
<p>Police Misconduct and Unsatisfactory Performance Procedures</p>	<ul style="list-style-type: none"> <li>• Replacing the existing procedures to provide a fair, open, proportionate and timely method of dealing with misconduct issues.</li> <li>• Encouraging a culture of learning and development for individuals and the organisation.</li> <li>• Encouraging line managers to make use of the procedures to improve both individual and, by extension, force performance and service delivery.</li> <li>• Early assessment of allegations to ensure that the response is proportionate, timely and fair.</li> <li>• New procedures could lead to non cashable savings of £10 million per year.</li> </ul>	<p>There will, be some initial training/implementation costs which will be met by the National Policing Improvement Agency.</p>				

Special Immigration Status	<ul style="list-style-type: none"> <li>• Will send a clear signal that foreign criminals and terrorists cannot expect to secure a settled status in this country.</li> <li>• The reporting and residency conditions, by ensuring contact management with the Border and Immigration Agency, will improve public protection and facilitate the eventual removal of these people from the United Kingdom in due course.</li> </ul>	The cost to the Borders and Immigration Agency is estimated at up to £1.1M a year.
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## **Youth Rehabilitation Order**

### **1. Purpose and intended effect**

#### Objective

The creation of a new statutory community sentence for young offenders. The Youth Rehabilitation Order (YRO) would be available as a sentence for all suitable offenders aged under 18 when convicted of an offence. It would replace the eight existing juvenile community sentences with a single generic sentence. This will consist of a menu of interventions including programmes, reparation, treatment for mental health issues and drug misuse, supervision and curfew, which the court can choose from to suit the individual offender.

For those offences that would be imprisonable in the case of an adult, the court would be able to sentence the young offender to a YRO with intensive supervision and surveillance (ISS). This would be the most onerous non-custodial sentence available for those under the age of 18 and would be imposed as a last resort before a custodial sentence.

#### Background

##### **YRO**

The Crime and Disorder Act 1998 established the principal aim of the youth justice system as the prevention of offending by children. This primarily involved the setting up of the Youth Justice Board and the establishment of YOTs.

In September 2003 the Home Office published the Green paper *Youth Justice: The Next Steps (YJTNS)* as a companion document to *Every Child Matters*. The paper set out a number of proposals relating to the way in which the current youth justice system could be changed to deal more effectively with children and young people aged between 10 and 17 inclusive who commit criminal offences.

The Government response to the consultation, published in March 2004, outlined the belief that sentencing options needed to be made simpler and more flexible. Respondents were generally supportive of the idea of a simplification of juvenile sentencing. Following the example of the new adult generic community sentence (CJ Act 2003) and in light of responses to the consultation, Ministers decided that they would welcome proposals for a generic juvenile community sentence in order to simplify juvenile sentencing while improving the flexibility of interventions.

##### **ISSP**

The existing Intensive Supervision and Surveillance Programme (ISSP) is the most rigorous non-custodial intervention available for young offenders. As the name suggests, it combines unprecedented levels of community based surveillance with comprehensive and sustained focus on tackling those factors that contribute to the young person's offending behaviour. It targets the most prolific and serious young offenders. Most ISSPs last for six months although twelve month ISSPs are being piloted in some areas.

There is no such thing currently as an 'ISSP Order' as the programme is merely an administrative scheme. An evaluation of ISSP has been undertaken by the University of Oxford. Interim findings published in Autumn 2005 showed that

although re-offending rates remained high (91%) the programme had had an impact in reducing the seriousness and frequency of offending.

## **Risks**

The YRO represents a risk based approach to community sentencing with requirements attached based on the seriousness of offending behaviour and the individual need of the young offender. The YRO will therefore be a more focussed sentence directly addressing many of the issues that contribute to offending. Without the creation of the YRO with ISS young people may not be receiving interventions appropriate to their need. A major policy aspiration for the new sentence is the reduction of young people who are sent to custody. Without the introduction of the YRO there is a risk that the number of young offenders sent to custody would increase. The introduction of YRO with an ISS element will also provide an alternative to custody, which the courts must consider, therefore meaning that only after careful consideration will a young person be sent to custody. To support this position, statutory restrictions will be put upon the court to preserve the intensive package of requirements as a last step before custody. We believe that the ISS coupled with a more risk based and offender focussed sentence may help to reduce this risk.

## **2. Options**

### Do nothing

If nothing was done, the ISSP would not be able to function to the extent proposed, as an alternative to custody.

### Alternatives to legislation

Intensive Supervision and Surveillance is an integral part of the proposed youth sentencing structure to help reduce any escalation to custody. The current ISSP is attached to the existing community Supervision Order or Community Rehabilitation Order with a Curfew Order and these will be repealed when the new generic community sentence, the Youth Rehabilitation Order, is introduced. ISS can be attached to the YRO as a last stop before custody.

### Legislative proposal

The creation of the YRO/ISS will help to address the problems of persistent and serious offending amongst juveniles. The YRO will normally last for a maximum of 12 months but with the option of extending to three years, the current maximum length of a Supervision Order. The YRO will be the standard community sentence used for the majority of young offenders and sentencers would be expected use the YRO on multiple occasions, adapting the menu as appropriate. The Reparation Order and the Referral Order will remain separate interventions below the YRO

The Intensive Supervision and Surveillance Requirement (YRO with ISS) is being included in the YRO for those serious and persistent young offenders who might be on the cusp of custody. It is based on the current Intensive Supervision and Surveillance Programme (ISSP). The Detention and Training Order will remain as an available sentence for serious or persistent offenders where the intensive YRO has already been tried.

### **3. Benefits and Costs**

#### Sectors and groups affected

This provision does not have any impact on the private or voluntary sector. ISS will be implemented and managed by the Youth Offending Teams. No additional resources will be required and use of ISS will be resource driven.

#### Benefits/Costs

A more risk based approach to sentencing young offenders which will focus on individual need such as treatment for substance misuse, education, curfews while also addressing offending behaviour. The YRO may lead to a reduction in the use of custody for young offenders, particularly those offenders who would benefit from early and intensive supervision in the community rather than in custody. There are wider benefits to society as the magnitude and quantity of crimes by offenders who complete the programme are reduced.

#### **Extra costs from the implementation of the YRO**

There may be further costs, over and above the current level of specific ISSP funding, resulting from increased use of the Intensive Supervision and Surveillance requirement.

#### **Training Costs**

YJB have bid for one off training costs of £669,000 based on an Open University delivered course which is cascaded to the majority of YOT members

### **4. Small Firms Impact Test**

There will be no impact upon small firms as the costs fall entirely on the public sector

### **5. Competition assessment**

There will be no impact upon competition as the costs and benefits accrue entirely to the public sector

### **6. Enforcement, sanctions and monitoring**

Monitoring and evaluation procedures exist for current community sentences and for ISSP and these will be carried forward to the YRO with ISS. These include a rolling programme of assurance reviews which are overseen by a project board.

### **7. Consultation**

This provision was outlined in the consultation paper *Youth Justice – The Next Steps* published in September 2003. Respondents were generally supportive of the idea of simplification of juvenile sentencing. Magistrates felt that more than one community sentence was required in order to emphasise progressively more severe punishments. Some felt there was a risk of escalation to custody. To counter this we have set out clear criteria for when a YRO with ISS should be considered.

### **8. Implementation and Delivery Plan**

We will work with the Youth Justice Board and through them Youth Offending Teams to ensure that the YRO is implemented successfully. We have already started

preparing for possible implementation and have discussed training and resource needs with stakeholders including the YJB and sentencers. The YJB have already identified a training provider, The Open University, and submitted proposed training costs. We will allow an appropriate period of time to elapse between Royal Assent and commencement to allow proper training of YOT staff and sentencers to take place. We are confident that we can build on the experience that has already been gained in implementing the adult generic community sentence and, subject to Bill timings, YOT staff and sentencers should be trained and ready to implement the YRO from early 2009 at the very latest.

We will work with the YJB, YOTs and sentencers to produce guidance appropriate to the new sentence. Currently the policy intention is to have non statutory guidance to allow greater flexibility in meeting the needs of the YRO. We will ensure that this guidance is produced in consultation with practitioners to ensure that it is useable and relevant at the point of delivery.

The YJB currently produce annual statistics which include community sentences and the use of custody. The implementation of the YRO will need to be monitored carefully to ensure that it is being used appropriately and that there are no issues of disproportionality or up-tariffing leading to a greater use of custody. The YJB will continue to monitor the youth justice system and will produce annual statistics which will include the new community sentence and we will explore with them how we can best capture statistics relevant to these issues. We would like to see a breakdown of how sentencers use the requirements of the YRO in different cases, including for different groups and offences. We are determined to guard against the disproportionate use of requirements as a crucial policy objective is to reduce the number of young people sent to custody.

## **9. Post Implementation Review**

The YRO will represent a complete overhaul of the current community sentencing framework for young offenders. It will represent a new risk based approach to dealing with young people before the courts and provide the opportunity to tailor requirements to individual circumstances and offending behaviour, it will also offer the opportunity to keep young people out of custody.

We recognise that such a change will require monitoring and reviewing if we are to achieve our policy objectives. The YJB will monitor the implementation and effect of the YRO as part of its statutory responsibilities. They will also collect data on the use of the YRO and the use of custody as part of its annual statistics. We will discuss with the YJB the most appropriate way of ensuring that our policy objectives are met but our view is that a full review/evaluation should take place after an appropriate period of time.

As part of any review we would look to establish an overview of how the YRO was being used and whether requirements are being attached in an appropriately risk based manner and according to need. We will want to establish whether sentencers are following YOT recommendations as part of the Pre Sentence Reports. We note that currently members of BME communities are subject to more onerous community sentences than white people and we will want to review whether the more risk based and individually tailored approach offered by the YRO is having any effect on this issue. We will want to review the impact that the introduction of the YRO has had on the numbers of young people sent to custody and ensure that the ISS element is being used properly and in the correct circumstances to guard against up-tariffing. Significantly we will also want to review what effects the YRO has had on reducing

re-offending rates. A review will not be statutory but will form part of the YJBs role in monitoring the effectiveness of the youth justice system.

### **Summary and recommendation**

To introduce a generic community sentence for offenders under the age of 18; to further the use of intensive supervision and surveillance for those young offenders most at risk of custody, thereby reducing the rate and seriousness of their offending; to make less use of costly custodial places in line with Government policy of sending juveniles to custody only as a last resort.

### **Declaration and publication**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Bridget Prentice**  
**Parliamentary Under Secretary of State**  
**Ministry of Justice**  
**June 2007**

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## **Regulatory Impact Assessment**

### **1. Criminal Justice and Immigration Bill – Sentencing and Appeals Provisions**

1. Indeterminate Sentences.
2. Restriction on imposing suspended sentences.
3. Early Release of prisoners liable for deportation.
4. Fixed Term Recalls.
5. Minimum period of unpaid work for breach of a community sentence.
6. Allocation of offences triable either way.
7. Trials or sentencing in absence of accused in magistrates' courts.
8. Test for quashing convictions.
9. Abolition of discount for unduly lenient sentences.

### **2. Purpose and intended effect**

#### **Objective**

The objective of these provisions is to reduce re-offending and protect the public, provide justice for all and increase confidence in the justice system.

These provisions will deliver the overall objective by:

- building public confidence in the sentencing framework by imprisoning serious and dangerous offenders while others receive tough and effective community sentences;
- ensuring that prison and probation resources are targeted at serious and violent offenders;

#### **Background**

The Government has changed the face of penal policy over the last ten years. In particular it has

- focused policy on ensuring that the dangerous offenders remain in prison until they cease to be a danger,
- increased the range of punishments available,
- recognised the need to do all we can to reduce re-offending – by significantly increasing drug treatments and offending behaviour interventions; more work with offenders in prison and on release, tougher community penalties, more unpaid work, more restorative justice and greater monitoring and support for those who have offended when they are in the community, in particular through the introduction of the Multi-Agency Public Protection Arrangements.

Re-offending rates have fallen by around two per cent between 2000 and 2004 for adult and young offenders, increased number of dangerous offenders off the streets, and a resultant contribution to reduction in crime. These provisions form part of this ongoing work.



The sentencing and appeals provisions in the Bill are outlined below in more detail.

### 1. Indeterminate Sentences

At present, when judges award a discretionary life sentence (and other indeterminate sentences), they must explain the minimum term for punishment purposes (the “tariff”) that the offender must serve. To calculate this (except in murder cases), they decide on the equivalent determinate sentence and then halve it to arrive at the tariff, because under a determinate sentence the offender is released at the halfway point on licence. Statute obliges courts to take account of the halfway release arrangements when setting tariffs.

In fact, very few offenders on indeterminate sentences will be released when their tariff expires – it is just the earliest point at which their release can be considered by the Parole Board. But it gives the public the impression that dangerous people might be released after a time that in some cases seems disproportionately short. The Government believes that the courts should have the discretion to set higher tariffs, that do not take account of early release requirements, in particularly serious cases. This provision allows courts to reduce the notional determinate sentence by less than half, or not at all, when setting a tariff for an exceptionally serious case where a discretionary life sentence is being imposed.

### 2. Restriction on imposing suspended sentences

The Criminal Justice Act 2003 introduced a new form of suspended sentence which enabled the courts to order an offender to undertake certain requirements in the community, such as an unpaid work or curfew requirement. If the offender failed to comply with such requirements or committed another offence within the period of suspension he or she would then be liable to serve the custodial part of the original sentence.

The policy intention behind the new suspended sentence was that it would be used by the courts in cases where they might previously have used a suspended sentence, or a short custodial sentence. However, monitoring of the use of new sentence suggests that instead the courts are making substantial use of the suspended sentence for summary-only offences which previously would have received community sentences. To ensure that suspended sentence orders are used, as intended, for offences that clearly meet the custodial threshold, the Bill includes a provision to ensure that these orders should in future apply to indictable offences and either way offences (regardless of the place of trial), but not to summary only offences.

### 3. Early Release and Early Removal of prisoners liable to deportation

Under the provisions of the Criminal Justice Act 1991, in contrast to the position of ‘domestic’ prisoners serving 4 years and over under the terms of the Act, the Parole Board currently plays no part in determining eligibility for

parole of foreign national prisoners who are liable to deportation or removal from the United Kingdom. In the case of *Hindawi*, the House of Lords ruled that the provisions of the Act were discriminatory and incompatible with the ECHR and that such prisoners should be afforded the same rights as 'domestic' prisoners by having their cases reviewed by the Parole Board. The Government is required to act to ensure that provisions are compatible with the ECHR.

The Early Removal Scheme for foreign national prisoners which allows the removal of foreign national prisoners liable to deportation or removal who have served a specified minimum portion of their sentence, has had a low take up rate so far. The Government is looking for more effective ways of focusing the existing prison estate on those who should be in the prison system, including doing more to return foreign prisoners to their country of origin.

#### 4. Fixed Term Recalls

One limb of the reforms made by the Criminal Justice Act 2003 was to place all offenders serving sentences of 12 months or more on licence from the point of their release from prison to the end of their sentence. An offender who breaches the terms of his or her licence is liable to be recalled to prison. The decision whether to recall is made administratively, but is then subject to review by the Parole Board which then considers whether to set a re-release date for the prisoner or a date for a further review of detention.

There has also been an increase in the number of recalled offenders in prison, reflecting the longer periods for which recallees are being held before they are re-released. It is important that dangerous offenders are kept in prison until they no longer pose a danger, and that the Parole Board can focus on assessing their risk. However, the recall population has increased from around 3,400 in April 2005 to nearly 5,000 in February 2007, an increase of 47 per cent.

#### 5. Minimum period of unpaid work for breach of a community sentence

Currently 40 hours is the minimum period of unpaid work which may be imposed for breach of a community order. This would apply to adults and to the juvenile Youth Rehabilitation Order (YRO). The minimum number of hours of unpaid work that may be imposed at the point of sentence would remain at 40.

Where a community order already contains an unpaid work requirement, there is no minimum to the number of hours that may be imposed on breach to make the order more onerous, but where there was no unpaid work requirement originally, the minimum number of hours that may be added for breach is 40. As a penalty for breach this can be seen as disproportionately severe and not in the spirit of the SGC Sentencing Guidelines, which state that the primary objective of breach action should be to ensure that the

requirements are completed. The result may be that offenders are not punished by unpaid work when they should be.

#### 6. Allocation of offences triable either way

Schedule 3 to the Criminal Justice Act 2003 amends the procedure to be followed by magistrates' courts in determining whether cases triable either way should be tried summarily or on indictment, and provides for the sending to the Crown Court of those cases which need to go there. The new procedures are designed to enable cases to be dealt with in the level of court which is appropriate to their seriousness, and to ensure that they reach that court as quickly as possible. These provisions give effect to a number of recommendations from Lord Justice Auld's *Review of the Criminal Courts*, including making magistrates aware, when they determine allocation, of any previous convictions of the defendant; removing the option of committal for sentence in cases which the magistrates decide to hear; allowing defendants in cases where summary trial is considered appropriate to seek a broad indication of the sentence they would face if they were to plead guilty at that point; and replacing committal proceedings and transfers in serious fraud and child witness cases with a common system for sending cases to the Crown Court, based on the present arrangements for indictable-only cases.

These provisions have not (with very minor exceptions) been commenced, because of concerns about resource implications. To meet these concerns and enable Schedule 3 to be implemented, the Bill will amend it by reinstating a general power to commit for sentence.

#### 7. Trial or sentencing in absence of accused in magistrates' court

Magistrates have a discretion to try defendants in their absence where the defendant fails to appear, but the court cannot sentence the defendant to custody in absence

The Bill creates a presumption that adult defendants will be tried in absence where the defendant fails to appear at trial and the magistrates' court is not aware of a reasonable excuse for failing to appear. In addition, the magistrates' court will be allowed to sentence a defendant to custody in his absence when the defendant has been bailed to appear at trial. The Government believes that these provisions will encourage defendants to appear at trial, as it is their duty to do.

#### 8. Test for quashing convictions

At present, convictions may be held to be 'unsafe' and quashed because of a defect in the proceedings, even where there is no doubt that the appellant was guilty of the offence of which he was convicted. The Government made clear in a consultation paper published last year that it was committed to changing the law so that convictions should not be quashed if the Court of Appeal were satisfied as to the appellant's guilt. The Bill gives effect to that commitment: it provides that in such circumstances a conviction should no

longer be quashed as unsafe, unless to dismiss the appeal would contravene the appellant's Convention Rights. In addition, express statutory provision is made for the Court of Appeal to refer to the Attorney General serious misconduct in the investigation or prosecution.

### 9. Abolition of discount for unduly lenient sentences

In its paper 'Rebalancing the criminal justice system in favour of the law-abiding majority', the Government set out its intention to change the rules on what happens when the Attorney General refers a case to the Court of Appeal for being unduly lenient. At present, the Court gives a discount to the offender on being re-sentenced to reflect the anxiety they are alleged to feel at going through a sentencing hearing a second time. This is referred to as the "double jeopardy" discount. This practice has already been abolished in murder cases (by means of the Criminal Justice Act 2003).

The 'Rebalancing' paper indicated that the Government now intended to abolish it for all life and unlimited sentences and to limit it for other sentences. Since the 'Rebalancing' consultation, the subject has been further reviewed. The Government has decided to abolish the discount in all life and unlimited sentence cases.

### **Rationale for Government intervention**

The measures set out above are essential to improve the justice system for the public. This improvement will be measured by better outcomes in penal policy; fewer offenders re-offending; more effective public protection from dangerous offenders and a system where the public have confidence that the punishment fits the crime.

### **Devolution**

These provisions extend to England and Wales.

### 3. Consultation

#### **Within Government**

Consultation on these provisions has taken place with the Office of Criminal Justice Reform (OCJR), Home Office, Ministry of Defence, Northern Ireland Office, The Attorney General's Office and the Parole Board

#### **Public consultation**

The Government published 'Rebalancing the criminal justice system in favour of the law-abiding majority' in July 2006. The paper set out the Government's strategy for putting law-abiding people and communities first; gripping offenders to cut crime, reduce reoffending, and protect the public; and introducing a simpler, swifter, fairer system with strong enforcement to

support rebalancing. This set out the Government's intention to abolish the discount for unduly lenient sentences.

In November 2006 the Government published its consultation paper "Making Sentencing Clearer". This paper sought views on changes to indeterminate sentences.

In September 2006 the Government published a paper "Quashing Convictions: Review of by the Home Secretary, Lord Chancellor and Attorney General"

The Government published "Penal Policy – a Background Paper" in May 2007 which sets out the Government's intention to introduce fixed term recalls and restrict the use of suspended sentences.

#### **4. Options**

##### **1. Indeterminate sentences**

###### **Option 1: Do Nothing**

Doing nothing risks a recurrence of very serious crimes receiving tariffs that seem disproportionately low, as occurred in the Sweeney case (Sweeney abducted and sexually assaulted a very young infant, and then drove extremely dangerously with the victim in the car – after the calculation of determinate sentence, reduction for guilty plea, and reduction by half to take account of early release arrangements, the tariff came to 6 years).

###### **Option 2: legislate to enable judges to increase tariffs for public protection reasons**

Several variations on this option were suggested in the consultation paper "Making Sentencing Clearer". All drew a negative reaction from consultees and there are clear practical difficulties in that courts would in effect be asked to assess future risk at the time of conviction.

###### **Option 3: legislate to allow judges to disregard – in particularly serious cases - the requirement to take into account the normal early release arrangements.**

This option would allow judges in the most serious cases to set a tariff that should maintain public confidence, without asking judges to play an inappropriate role in risk assessment. This is the Government's preferred option.

## 2. Restriction on imposing suspended sentences

### **Option 1: Do Nothing**

Monitoring of the use of new sentence suggests that instead the courts are making substantial use of the suspended sentence for summary-only offences where previously they would have given community sentences. Doing nothing would mean that this practice would continue. Trends suggest that this would result in a permanent addition of 500 places to the prison population.

### **Option 2: Amend legislation**

Amending legislation to ensure that these orders should in future apply to indictable offences and either way offences (regardless of the place of trial), but not to summary only offences, would ensure that suspended sentence orders are used, as intended, for the more serious offences. This is the Government's preferred option.

## 3. Early Release and Early Removal of prisoners liable to deportation

### **Option 1: Do Nothing**

Doing nothing would make the Government in breach of its obligations under the European Convention of Human Rights.

### **Option 2: Amend legislation**

The legislation could be amended in the following ways to ensure it is compatible with ECHR.

- Amending sections 46 and 50 of the Criminal Justice Act 1991 to enable foreign national prisoners serving 4 years or more to have their cases referred to the Parole Board for parole consideration,
- Providing that the Board's decision is binding on the Secretary of State in respect of those offenders serving up to 15 years, with the Secretary of State retaining the final decision to release in 15 year and over sentences,

### **Option 3: Amend Legislation and make amendments to the Early Removal Scheme.**

In addition to making the amendments set out in option 2, amendments could be made to a number of restrictions on the categories of prisoner to bring in scope a larger proportion of prisoners. This would allow prisoners not liable for deportation (such as EU nationals who have treaty rights entitling them to reside in the UK) but who genuinely wish to resettle abroad, to be given the opportunity to benefit from the scheme. Those prisoners wishing to benefit from early removal to resettle would have to be able to demonstrate that, in the absence of supervision, they would not present an unacceptable risk to the public; the intention to resettle was genuine and not solely to evade

licensed supervision; and the prisoner had genuine ties in the country in which he would be resettling. To avoid discriminatory legislation, early removal for resettlement purposes would also have to be considered for UK nationals who could demonstrate a genuine intention to resettle abroad. This is the Government's preferred option.

#### 4. Fixed Term Recalls

##### **Option 1: Do Nothing**

This would lead to an increase in the number of non-dangerous offenders in prison. Effective enforcement of licence conditions by the probation service, longer periods on licence for prisoners sentenced under the provisions of the 2003 Act, pressures on Parole Board processes and resources, and a low rate of re-release has seen the recall prison population increase from some 3,400 in April 2005 to nearly 5,000 in February 2007, a rise of 47%. Further rises are anticipated.

##### **Option 2: Amend Legislation**

It is imperative that where dangerous or violent offenders pose a risk while on licence they should be returned to prison and not re-released until it is safe to do so. But many recalled offenders do not fall into this category and take up scarce prison places that could be used more effectively for offenders who pose a greater risk to society. To ensure that prison and Parole Board resources are focused on protecting the public from dangerous and violent offenders, while at the same time continuing to send a clear message to all offenders that licence conditions will be rigorously enforced, legislation could be amended so

- that non-dangerous offenders who breach their licence conditions should be subject to recall to prison for a fixed period of 28 days;
- in such cases the role of the Parole Board be restricted to an appellate one: at the moment, a great number of recalls are not challenged and a mandatory review by the Board is nugatory work. The Board will continue to review the recall of dangerous offenders.

This is the Government's preferred option.

#### 5. Minimum period of unpaid work for breach of a community sentence

##### **Option 1: Do Nothing**

The current minimum period of unpaid work for breach of a community sentence is 40 hours. This can be a disproportionately severe response to breach and conflicts with the Sentencing Guidelines Council guideline which says that the primary objective of breach action should be to ensure that the order is completed.

## **Option 2: Amend Legislation**

Introducing a new minimum of 20 hours would be small enough to overcome the problem of disproportionate severity, but large enough to avoid the problem of short periods of unpaid work being administratively burdensome and expensive. This is the Government's preferred option.

### 6. Allocation of offences triable either way

#### **Option 1: Do nothing**

The Government would be unable to implement Schedule 3 of the Criminal Justice Act 2003 because of the risk that magistrates' courts would impose heavier sentences in cases that they were no longer able to commit to the Crown Court for sentence.

#### **Option 2: Implement without amendment**

Schedule 3 removes the magistrates' general power to commit cases tried summarily to the Crown Court for sentence. If this were implemented unamended, there is a risk that it might increase the demand for prison places if the magistrates were to impose, in cases that they had to sentence themselves, more severe sentences than the Crown Court would now give on committal for sentence.

#### **Option 3: Make amendments to the provisions**

The risk of magistrates imposing more severe sentences than the Crown Court would have done can be obviated by amending the Schedule to restore a general power to commit for sentence. The provisions could then be implemented without risk of increasing the demand for prison places. This is the Government's preferred option.

### 7. Trials in absence

#### **Option 1: Do nothing**

There is a considerable variation in the extent to which magistrates' courts in different areas make use of the existing power to try in absence.

#### **Option 2: Create a statutory presumption in favour of proceeding in absence**

Creating a presumption that defendants who fail to appear at trial without making the court aware of a reasonable excuse will be tried in absence (and allowing the magistrates to sentence a defendant to custody in absence, subject to appropriate safeguards) will encourage courts to proceed and make clear to defendants that they cannot escape justice by failing to appear in court. This is the Government's preferred option.



## 8. Test for quashing convictions

### **Option 1: Do nothing**

Under the existing law, convictions may be quashed as unsafe even where the Court of Appeal have no doubt the appellant is guilty. This is damaging to public confidence in the criminal justice system and may also put the public at further risk.

### **Option 2: Amend the test**

This would ensure that, where the Court of Appeal are satisfied that the appellant is guilty of the offence, the conviction should not be regarded as “unsafe” and should not be quashed unless the applicant’s Convention Rights had been contravened. This is the Government’s preferred option.

## 9. Unduly Lenient Sentence Discount

### **Option 1: Do nothing**

This would enable to Court of Appeal to continue to make discounts in all cases except murder.

### **Option 2: Abolish the discount for life and unlimited sentences**

This would enable the discount to be abolished in the most serious cases. The Court of Appeal would still be able to make discounts in other cases. This is the Government’s preferred option.

### **Option 3: Abolish the discount for life and unlimited sentences and limit it for other sentences, as proposed in the ‘Rebalancing’ paper**

This would abolish the discount in the most serious cases and would modify it in other unduly lenient sentence cases. However, the possibility of limiting the discount has been identified as problematic - it is not clear how this might be achieved.

### **Option 4: Abolish the discount altogether**

Abolishing the discount in all cases would give rise to additional pressures on prison resources.

## 5. Costs and benefits

### **Sectors and groups affected**

Those directly affected will be defendants before the court and convicted persons subject to a custodial or community sentence. HM Courts Service, the legal profession, the probation service, charities and voluntary groups will also be affected.

## Benefits and Costs

Costs and Benefits are shown in the table below.

	<b>Key Benefits of Preferred Option</b>	<b>Costs</b>
Discretionary life Sentences	<p>Gives more discretion to the judiciary to ensure that those who commit very serious offences will not be released after a short time in prison</p> <p>Strengthen public confidence by increasing tariffs for very serious offences.</p>	It is anticipated that this provision would increase the prison population by some 25 places.
Restriction in imposing suspended sentences	<p>Ensure that prison places are reserved for the more serious offences.</p> <p>A saving of some 400 prison places.</p>	
Early Release and Early Removal of prisoners liable to deportation or removal	<p>A saving of around 60 prison places</p> <p>Ensures that the UK law is compatible with the ECHR, following the House of Lords judgment in the case of <i>Hindawi</i>.</p> <p>Improve the operation of the Early Removal Scheme, which allows the removal of foreign national prisoners liable to deportation who have served a specified minimum portion of their sentence, to bring into scope a larger proportion of prisoners.</p>	

Fixed Term Recall	<p>Ensure that prison and Parole Board resources are focused on protecting the public from dangerous and violent offenders, while at the same time continuing to send a clear message to all offenders that licence conditions will be rigorously enforced</p> <p>A saving of up to 1,000 prison places.</p>	
Minimum period of unpaid work for breach of a community sentence	This provision should be cost neutral	
Allocation of offences triable either way	This provision should be cost neutral	
Trials in absence	<p>Court time may be saved as magistrates deal with more cases at the scheduled time</p> <p>The proportion of defendants failing to appear may be reduced, saving court time.</p>	In the short term there may be an increase in appeals and rehearings of cases where a defendant has been convicted and/or sentenced in absence.
Amending the test for quashing convictions	Some appellants would no longer have convictions quashed where the Court of Appeal were satisfied that the appellant was guilty of the offence.	<p>A maximum of 20 additional prison places</p> <p>Any additional costs arising from investigating misconduct that the Court of Appeal refer to the Attorney General</p>
Abolition of discount for unduly lenient sentences	Reassuring victims, relatives and the public generally that the Crown Court's sentencing errors are fully, not partially, corrected	Around 4 prison places per annum

## **Administrative Burdens and Simplification**

The only implications that the Bill has for the private sector, in this case, the legal profession, is the need to become familiar with the new sentencing and appeals provisions and how this might affect their clients.

This is considered a one off burden as with any change to guidance and procedures etc which will be resolved as the changes become familiar. In general the Bill is not designed to simplify but has clarified in some aspects sentencing practices and removes ambiguities.

### **6. Small Firms Impact Test**

Solicitors and barristers are affected by the changes even if a one off by becoming familiar with and having to understand the new sentencing provisions

### **7. Competition assessment**

The provision will not affect competition.

### **8. Enforcement, sanctions and monitoring**

These provisions will be monitored by the Ministry of Justice. Sentences imposed in unduly lenient sentence cases are routinely monitored by the Attorney General's Office.

### **9. Implementation and delivery plan**

These measures will be implemented by Commencement Order and their implementation announced.

### **10. Post-implementation review**

These provisions will be reviewed to ensure that they are fully effective

### **11. Summary and recommendation**

It is recommended that the Government's preferred options are taken forward in the Criminal Justice and Immigration Bill.

## **12. Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Rt Hon David Hanson MP  
Minister of State  
Ministry of Justice  
July 2007**

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## **Regulatory Impact Assessment**

### **1. Title of Proposal**

Extension of Referral Orders

### **2. Purpose and intended effect**

#### Objective

To reduce re-offending by young people and potentially lower the use of custody. This will be achieved by extension of the use of referral orders by:

- Amending the compulsory and discretionary referral conditions to remove the current disqualification for a referral order where the young person has been bound over to keep the peace or to be of good behaviour or has been given a conditional discharge.
- Extending discretionary referral orders to a second conviction guilty plea, where a referral order has not previously been given.

Increasing the use of the referral order in this way will reduce offending as the referral order has the lowest re-conviction rate of any community based juvenile sentence at 44.7%. Reducing re-offending will, in the longer term, reduce the use of custody.

#### **Background**

We need the prosecution of youths to be as effective as possible in holding them to account for their actions, protecting the public and giving victims a voice. The extension of the mandatory and discretionary provisions for referring young offenders to community panels means that referral orders would be available as a sentence for all suitable offenders aged under 18 who plead guilty on their first and/or second conviction for an offence, if they have not previously received a referral order. The provisions would remove some of the restrictions imposed by s16 & 17 of the Powers of Criminal Courts (Sentencing) Act 2000 and give sentencers greater flexibility in sentencing young offenders for whom the sentence is not fixed by law and for whom discharge, hospital orders and custody are not an option.

Referral orders were introduced in the Powers of Criminal Courts (Sentencing) Act 2000 and implemented nationally on 1 April 2002. The legislation created a new sentence of referral to a Youth Offender Panel. Referral is available for young people convicted for the first time who plead guilty. Orders are made for between 3-12 months. The panel is led by trained volunteers from the local community operating on restorative justice principles which involve the young person taking responsibility for the consequences of their offending behaviour and making restoration to the victim.

An offender given a referral order has to meet with a referral panel established by a youth offending team specified by the court and agree a contract with them. The offender then has to attend panel meetings as required and comply with the agreed contract, which will set out a programme of behaviour aimed at reducing re-offending. Breach of the requirements can lead to referral back to court which will have the option of resentencing the offender.

The aim of referral orders is to give young people the opportunity to wipe the slate clean after completing the contract and to encourage young people to take responsibility for their offending behaviour, participate in rehabilitative activity and to be reintegrated into the law abiding community. This process results in greater involvement of local communities and businesses in the youth justice system and extends the collaboration between young offender teams and their partner agencies.

Referral orders are now the main intervention for young offenders who plead guilty on their first court appearance and account for around a quarter of all youth justice sentences. The reconviction rate for offenders who have received a referral order is 44.7% which is significantly better than for any other juvenile sentence,

### **Rationale for Government Intervention**

This proposal represents a low risk option as the referral order has a proven track record of being the best performing community sentence. Therefore greater use of the referral order is expected to provide better outcomes for juvenile offenders than the alternatives.

### **3. Consultation**

Extending referral orders to a second conviction was part of the general consultation exercise as part of Youth Justice: the Next Steps (available at: <http://www.homeoffice.gov.uk/documents/2003-cons-youth-justice-next-ste/> for the aborted Sentencing and Youth Justice Bill.

#### *Within Government*

The Home Office has consulted the Youth Justice Board, Department of Constitutional Affairs and the Crown Prosecution Service.

#### *Public consultation*

Informal consultation was undertaken with the Magistrates' Association, Justices Clerks' Society and Youth Offending Team Managers. The Government response to the consultation, published in March 2004, available on Home Office web site at:

[www.homeoffice.gov.uk/justice/sentencing/youthjustice/index.html](http://www.homeoffice.gov.uk/justice/sentencing/youthjustice/index.html), and <http://www.homeoffice.gov.uk/inside/consults/summaries/index.html>,

outlined the belief that sentencing options needed to be made simpler and more flexible. Respondents were generally supportive of the idea of a simplification of juvenile sentencing.

#### **4. Options**

##### Do nothing – Do not extend the use of referral orders:

If nothing were done the referral order would continue to be subject to the existing restrictions and there would be no change in the current use of sentencing options, including custody. While it delivers results in reducing re-offending, by not extending its use, the victims, wider society and young offenders themselves would not benefit from this approach.

##### Extend the use of Referral Orders

The extension of referral orders will enable more young offenders to have the opportunity of being dealt with by this effective disposal as proven by its re-conviction rate. Extending use of referral orders is therefore expected to result in a reduction in reconvictions and subsequent downstream savings –

#### **5. Benefits and costs**

##### Sectors and groups affected

These provisions do not impact on the private or voluntary sector other than the need for an increase in the number of trained volunteer panel members. Referral panel members are volunteers from the local community so there will be an additional demand for volunteers and a potential increase in workload for existing panel members.

##### Youth Offending Teams

Most additional resources will fall to youth offending teams who will manage the sentence and run the panels. Costs shown below are based on the number of hours input by youth offending team members to complete the referral order process.

##### Police/Courts/Legal Services

Extension of referral orders is not expected to result in an increase in the workload of the police or the courts as the predicted increase of referral orders is expected to be drawn from existing disposals. There will therefore be off-setting reductions in the use of other community sentences (currently action plan orders, reparation orders, supervision orders, community rehabilitation orders/community punishment and rehabilitation orders) and a reduction in the use of fines or conditional discharges.

##### Victims of crime

There would be an expected benefit to victims of crime because of the restorative justice focused approach of referral orders. Where the victim wishes, offenders are expected to apologise for their actions and to offer reparation as part of their referral contract.



## Youth Offenders

There would be a benefit to young offenders made subject to referral orders as they are proven to be an effective sentence in reducing re-offending so helping the young offender reintegrate into the community successfully and remove or limit further involvement with the Criminal Justice System.

## Benefits/Costs

### **Option 1: Do Nothing**

By not extending the use of referral orders, associated costs and potential increase in workloads would not be generated. The potential benefits of reducing re-offending and the reduction in future costs would not be realised.

### **Option 2: Extending the use of referral orders**

A greater use of referral orders is expected to reduce re-offending based on the reconviction rate of 44.7% as published in '*Re-offending of juveniles: results from the 2004 cohort, Reconviction Analysis Team, RDS-NOMS, June 2006*', table A5, p.18. This is significantly better than the other community sentences with the next best performing sentence, a discharge, having a reconviction rate of 57.6%.

Implementing powers for extending referral orders will produce increased cost at the outset because they largely will be replacing orders with less expensive unit costs. The savings produced by reduced reconviction should offset the increased costs in later years.

The additional costs are Youth Offending Team (YOT) costs reflecting the increase input required from them. Court costs will, initially, remain unchanged as the offenders would still have appeared but received alternative sentences. Over time the expectation is that overall costs will fall with a reduction in re-offending, but these savings will take time to accrue.

The referral order unit cost is estimated at £1,879. It is estimated that there will be 5,000 new referral orders as result of these changes: these will be expected to 'substitute' in the following proportion for alternative court orders:

40% for Action Plan Order (APOs)=	2000
40% for Reparation Orders (Rep Os)=	2000
5% for Supervision Orders (SOs)=	250
10% for Community Rehabilitation Order/Community Punishment and Rehabilitation Order (CRO/CPRO)	
=	500
5% for fines or conditional discharges =	250

Differential cost- i.e. the cost of the change produced by the extending referral order powers- is calculated by subtracting the unit cost of the 'substituted' order from the unit cost of the referral order which has 'replaced' it:

Differential **cost** of 2,000 replaced APOs =  $2000 \times (\pounds1879 - \pounds1458) = 2000 \times \pounds421 = +\pounds842000$

Differential **cost** of 2000 replaced Rep Os =  $2000 \times (\pounds1879 - \pounds1600) = 2000 \times \pounds279 = +\pounds558000$

Differential **saving** of 250 replaced SOs =  $250 \times (\pounds1879 - \pounds4059) = 250 \times -2180 = -\pounds545000$

Differential **saving** of 500 CRO/CPRO =  $500 \times (\pounds1879 - \pounds2069) = 500 \times -\pounds190 = -\pounds95000$

Differential **cost** of 250 fines/nil cost disposals =  $250 \times \pounds1879 = +\pounds469750$

**Total net overall Cost = £1,229,750**

*Note:- unit cost estimates provided by YJB based on costs to YOTs*

Referral orders perform significantly better (44.7%) than alternative court disposals, and it is therefore reasonable to predict that the additional referral orders made as a result of the new discretionary powers will reduce reconvictions. Based on reconviction data from Home Office Statistical Bulletin, Re-offending of juveniles: results from 2004 cohort online report 10/06, table A5, p.18 these downstream savings can be estimated as follows:-

- 5000 additional Referral Orders expected to replace 2000 APOs, 2000 reparation orders, 250 supervision orders, 500 community sentences, 200 fines, 50 discharges
- 2000 APOs (66.9% reconviction rate) produce 1336 reconvictions, replaced by only 894 reconvictions following ROs (44.7% reconviction rate) - reduction in reconviction 442
- 2000 reparation orders (69.2% reconviction rate) produce 1384 reconvictions, replaced by only 894 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 490
- 250 supervision orders (73.6% reconviction rate) produce 184 reconvictions, replaced by only 112 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 72
- 500 community sentences (67.2% reconviction rate) produce 336 reconvictions, replaced by only 224 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 112
- 200 fines (63.1% reconviction rate) produce 127 reconvictions, replaced by only 90 reconvictions following ROs (44.7% reconviction rate)- reduction in reconviction 37
- 50 discharges (57.6% reconviction) produce 29 reconvictions, replaced by only 23 reconvictions following ROs (44.7% reconviction rate)-reduction reconviction 6

**Total number of reduced reconvictions = 1159 a year**

Given that 44.7% reconviction figure for referral orders partly reflects that it applies exclusively to first time convicted offenders and that additional referral orders under new discretionary powers will apply exclusively to second time and more persistent offenders, it is reasonable to assume that a higher reconviction rate will apply to the 'new' referral order cases, differentiated by

ages. The statistical figures show that the reconviction rate is higher for males than females and that it is 10% more in the 10-14 than the 15-17 age groups.

- To take account of the above, assuming a reduction by half in comparative reconviction performance of RO against other disposals and reducing total reduced reconvictions by half, gives a **total estimated number of reduced reconvictions of 600 a year.**
- The 600 reconviction cases 'displaced' would have been dealt with by court disposals such as APO, reparation order, supervision order, etc at a cost of £2373 (conservative 'average' of the cost of these disposals to Youth Offending Teams), giving **Total estimated downstream savings = £1,423,800**

Taking costs into account, the total saving to Youth Offending Teams will be £194k per annum.

#### *Compliance costs*

There will be a one-off administrative cost for court staff, magistrates and youth offending teams in familiarising themselves with this change. This will be minimal: mainly time taken to read the guidance which will be issued with the regulations.

The test to be applied by the court is one which is simple to apply and easily understood. It will be clear from the charge sheet in court whether the offence is imprisonable or not.

As stated previously, there will be longer term cost savings for YOTs. The impact on the court costs is expected to be neutral. This should not lead to an increase in adjournments. About 5,000 cases a year will be affected following engagement with the young person and their legal representative.

A Equality Impact Assessment has been prepared. Race, gender and disability are routinely monitored.

#### Administrative Burdens and Simplification

There are no specific burdens created on the private sector by the extension of referral orders. The proposal is aimed at delivering the proven benefits of referral orders in youth offending. This process involves the public sector overall.

### **6. Small Firms Impact Test**

There will be little or no impact upon small firms as the costs fall entirely on the public sector. As the increase in referral orders will come from existing disposals defence lawyers will not have additional demands placed on them.

### **7. Competition Assessment**

There will be no impact upon competition as the costs and benefits accrue to the public sector.

## **8. Enforcement, sanctions and monitoring**

Monitoring and evaluation procedures exist for current referral orders and these will continue.

## **9. Implementation and delivery plan**

The Referral Order, underpinned by restorative justice principles, is a successful youth justice disposal. For this reason we, with the support of our partners and stakeholders, decided on legislative proposals to give sentencers power to extend its use to a larger population. The YJB has recently published an updated and improved initial training pack for youth offender panel volunteers, 'Panel Matters', together with a guidance to YOTs 'Volunteering in the Youth Justice System' on recruiting and managing volunteers. The YJB will also be publishing an Action Plan to improve the delivery of Referral Orders and the effectiveness of Youth Offender Panels. An updated MOJ/YJB guidance on Referral Orders and Youth Offender Panels for courts, YOTs and panel members will also be published in 2008 to ensure robust and effective implementation.

## **10. Post implementation review**

The Ministry of Justice and the Youth Justice Board will continue to keep the operation of the referral order legislation under review. Researchers in the National Offender Management Service retrospectively monitor the reconviction rates for all youth justice disposals including referral orders. The YJB currently produce annual statistics for all youth justice disposals including referral orders. The YJB's Action Plan which will coincide with the possible implementation of the extension of referral orders will also help to underpin the implementation of this provision. We recognise that extending the referral order will require monitoring and reviewing to ensure that it is meeting its policy objectives. The YJB will continue to monitor the youth justice system and will produce annual statistics which will include the new community sentence. We will explore with the YJB how we can most effectively review and evaluate the effects of the extension of the referral order. We would expect that a full evaluation of the new provision would take place within three years of implementation.

## **11. Summary and recommendation**

The extension of referral orders to a second conviction would give sentencers in both the Crown and magistrates' courts the flexibility they need in sentencing, which was not available with the current legislation. The initial potential costs of extending referral orders to a second conviction would be offset by downstream costs in the decrease in reconviction rates as well as the more expensive up tariff sentences.

## **12 Ministerial Sign Off**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Bridget Prentice  
Parliamentary Under Secretary of State  
Ministry of Justice  
June 2007**

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## **Information Sharing for enforcement: extending magistrates' courts access to Department of Work and Pensions (DWP) Customer Information System (CIS) to show benefits information**

### **1. Title of proposal**

Information Sharing for enforcement: extending magistrates' courts access to Department of Work and Pensions (DWP) Customer Information System (CIS) to show benefits information

### **2. Purpose and intended effect of measure**

#### **i) Objectives:**

To allow HMCS enforcement staff access to offenders benefit status to determine if a deduction from benefit (DB) order is the appropriate intervention and to increase the numbers of successful applications made to DWP.

To improve efficiency and business performance both in the courts and DWP, as DWP offices may see fewer applications made, freeing up resource to utilise in other priority areas.

To continue to build on the effective working between HMCS and DWP as a further step in modernising government and improving public services.

#### **ii) Devolution:**

These proposals apply to England and Wales

#### **iii) Background:**

Magistrates' courts staff have had an information sharing arrangement with DWP for fine enforcement since 1 April 2003. In 2004 the Department sought and received DWP approval for direct read only access to basic personal information held on the new Customer Information System (CIS) database that was being developed, for the purpose of tracking down those in default of court imposed penalties. Access to CIS was rolled out nationally between July and September 2005 and is an integral feature of the toolbox used by enforcement staff.

HMCS access to DWP CIS is established in statute in s125C magistrates' courts Act 1980. S125C was inserted by the s94 of the Access to Justice Act 1999. HMCS can only view name, address, date of birth and National Insurance Number details about the offender, and then only for the purpose of enforcing a warrant.

#### **iv) Rationale for Government Intervention:**

*What are the identified problems?*

In the Magistrates' Courts there are a number of enforcement steps which take place before a warrant is issued. It is not possible to access CIS at this point.

If an offender defaults on the payment of a fine, by law the first step the fines officer (the court officer responsible the administrative enforcement of fines) considers is a deduction from benefit order ('DB') or an attachment of earnings order ('AEO'). Currently Magistrates' Courts apply for deduction from benefit orders 'blind' i.e.

without knowing what benefit they are in receipt of. Once the application is made it is DWP's role to check their own systems to see if the offender is on the right sort of benefit or has too many other deductions in place. It can take a number of weeks for the decision to be returned by DWP, and there are regional variations in the time it takes them to respond. We believe a contributory factor to delay is the inability of the courts to filter out, at an early stage, those DB applications which will be rejected because the offender is not on the right benefit or there are other deductions in place. Based on a sampling exercise of 4 Areas conducted in February 2007 we think approximately 50% of all applications are rejected by DWP.

Delays have an impact on enforcement and thereby impinge upon the effectiveness and credibility of fines as a sentence.

*What is the scale of the problems?*

There is limited management information held or available centrally (except the overall figure which shows the number of active DBs). We consulted 4 HMCS areas seeking feed back on specific management information on Deductions from Benefits.

From the sample areas, it shows 69,446 fine accounts in default, of which 15.3% had an active DB. Applications being refused by DWP are approximately 42%. There are a number of reasons why an application may be declined, for example, not in receipt of benefit, in receipt of a non-deductable benefit, joint claim. This list is not exhaustive.

*Will the problems identified worsen without government intervention? If so, how?*

If HMCS does nothing, the levels of applications will continue to rise. This in turn will have an operational impact in that it may create further back logs in applications and the time taken by DWP to process applications from the courts. Currently it can take a number of weeks for a decision to be returned by DWP. These delays have an impact on enforcement and thereby impinge upon the effectiveness and credibility of fines as a sentence.

Making these necessary changes and providing the courts with access to benefits information before they engage DWP will be extremely useful - it has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

*Have other methods been considered/used? If so, why do they fail to resolve the issues?*

We have made efforts to minimise the delays to the DB application process through better working with DWP, including sharing best practice at national conferences and DWP-HMCS regional meetings. However we have identified the fundamental barrier here as legislative, so require new legislation to achieve the desired outcome.

### **3. Consultation**

This is an intra-government policy change to improve the effectiveness and credibility of fines as a sentence and improve further payment rates. HMCS has the support of DWP, who agree about the potential to bring efficiency gains to both departments. We expect this will enable DWP to free up resource to use in other priority areas.

#### **List of public consultations:**

As this is about improving service delivery through modifying an existing system this has not been considered a matter for public consultation.

#### **Key stakeholders involved in consultation:**

Following an Office for Criminal Justice Reform (OCJR) consultation on deduction from benefits in November 2006, the majority of Local Criminal Justice Boards (LCJBs) fed back that access to an offenders benefits status would help them to make a decision about the appropriate enforcement intervention, on a case-by-case basis.

HMCS enforcement staff consistently tell us (e.g. During an Enforcement Champions Event in October 2006 and through on-going discussions) that the situation of making an application for a deduction from benefit without knowing if the application would be successful or not, is leading to unnecessary delays in collecting monies owed to the courts and also creating backlogs at DWP processing offices. Having access to benefits information will allow enforcement staff to avoid applications where they know the offender was not in receipt of a deductible benefit, this would enable enforcement staff to make an alternative intervention.

#### **Where policy has changed as a result of consultations:**

Deductions from benefits were already in use in magistrates' courts prior to 2003, under the Fines (Deductions from Income Support) Regulations 1992. The report on the evaluation of the Courts Act pilot sites emphasised the importance of increasing the level of deductions from benefits from £2.80 to £5 – a policy change that was delivered in December 2004. The Courts Act enabled DBs to be used more frequently and without offenders returning to court.

HMCS has seen a significant increase in usage DBs. Management information shows that since April 2004 to August 2006, there has been average increase of approximately 10% - 15% per quarter in the numbers of active DBs. The table below shows the most up to date management information available on numbers of active DBs.



<b>Month</b>	<b>Total no. active DBs</b>
Apr 04	20,300
Nov 04	28,300
Feb 05	33,400
May 05	39,400
Aug 05	44,400
Nov 05	<b>No info</b>
Feb 06	53,900
May 06	60,000
Aug 06	68,000

Information source:  
Work and Pensions Longitudinal Study (WPLS)  
Information Directorate -  
Department for Work and Pensions (DWP)

#### **4. Options**

Currently magistrates' courts apply for deduction from benefit orders 'blind'. Once the application is made it is DWP's role to check their own systems to see if the offender is on a deductible benefit or has too many other deductions in place. It can take a number of weeks for the decision to be returned by DWP, and there are regional variations to this. A contributory factor to delay is the inability of the courts to filter out, at an early stage, those applications which will be rejected because the offender is not on the right benefit or there are other deductions in place or offender is not in receipt of benefit at all.

##### **Option 1 - To do nothing and leave access to DWP CIS unchanged**

To do nothing could mean delays remain or get worse as we expect the use of deduction from benefit orders to increase. Management information shows that since April 2004 (active DBs - 20,300) to August 2006 (active DBs - 68,000), there have been average increases of between approximately 10% - 15% per quarter in the numbers of active DBs.

Delays have an impact on enforcement and thereby impinge upon the effectiveness and credibility of fines as a sentence.

**Option 2 - To increase HMCS access to include benefit status as a field but also enable access after sentencing but before default.**

Making these necessary changes and providing the courts with access to benefits information before they engage DWP will be extremely useful - it has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

**Compatibility of the provisions with the European Convention on Human Rights**

This change does not give rise to any ECHR issues.

**5. Costs and Benefits**

**Option 1 – To do nothing and leave access to DWP CIS unchanged**

**Costs**

Current HMCS costs are calculated as a percentage of total hits and applied to the costs DWP are charged for Customer Information System (CIS) by their IT service provider. For the period 2006/07 HMCS paid DWP £147,734 for access to CIS at the current level. This equates to 0.17% of total accesses to DWP CIS.

**Benefit**

We will not incur a one-off development costs and increased running costs for access to DWP CIS. However, HMCS will probably see a continued rise in applications and numbers of deductions from benefits becoming active. This has the potential to cause backlogs within DWP offices, and courts waiting longer for decisions.

**Option 2 – To increase HMCS access to include benefit status as a field but also enable access after sentencing but before default.**

**Costs**

There will be two costs to HMCS to increase access to show benefit status, these are development cost and running costs:

**• Development Cost -**

HMCS would incur a one off cost for development to upgrade the current HMCS access of personal information screen to include access to benefit information. There are two options available:

- i. DWP's IT service provider could set up a hyperlink from HMCS current CIS screen to an already existing DWP application interface which lists all the benefits that an offender maybe in receipt of, including but not limited to the ones eligible for deduction. HMCS would provide staff training to sift out those offenders on a deductible benefit. This option would be the simplest and most cost-effective way to implement the change

ii. The alternative is for DWP IT service provider to develop an application interface uniquely for HMCS. This would enable HMCS to access benefit information from the current CIS screen to show if an offender was currently on a deductible benefit only. This screen would need to be further developed in 2008/09 when the new Employment Support Allowance (ESA) is introduced. This cost would be more substantial as a new application interface screen would have to be developed to allow access to deductible benefits for HMCS fines enforcement.

- **Running cost**

HMCS will pay DWP for the number of accesses made by courts staff to view the benefit status of an offender.

HMCS is currently working with DWP and their IT service provider to ascertain the one off development cost and on-going running costs for this enhanced access.

### **Benefit**

This improvement will be extremely useful - it has the potential to improve efficiency and business performance both in the courts and DWP, as we expect DWP offices will see fewer unsuccessful applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments. We anticipate there will be annual running cost savings for DWP and possibly HMCS.

### **Social Impacts**

Enforcement takes place after a defendant has been found guilty of an offence and sentenced. Magistrates' courts do not routinely collect data on the ethnicity of defendants, but at a general level, statistics suggest that BME groups have a higher representation as users of the Criminal Justice System when compared to their representation as members of the population as a whole.

This policy will not have an adverse impact on minority groups. We are not changing the way the deduction from benefit system works. DWP will still process applications and make the final decision about whether a DB application is granted, subject to all the safeguards they have in place. This change is about enabling the courts to do their current work more effectively

## **6. Simplification and reducing administrative burdens**

There will be no burdens to other sectors (private, voluntary) from this policy. This is simply an enhancement to an existing arrangement with DWP.

## **7. Small firms Impact Test**

This is an intra-government change in policy to improve the effectiveness and credibility of fines as a sentence and improve further payment rates. It does not involve the private sector so there would be no effect on small firms.

## **8. Competition Assessment**

The changes proposed by HMCS will enable courts to access an offender's benefit status before making an application for a deduction from benefit. This will sift out those offenders not in receipt of a deductible benefit or any benefit, which will allow court staff to make an alternative intervention. This will also save DWP time as they will not be receiving applications for deductions from benefits for offenders which they would have previously processed and declined.

The level of access we are aiming for here already exists in another part of the business, for the purpose of assessing applications for criminal legal aid, although there it is not on a statutory footing.

There is no private sector involvement in the provision or delivery of this service. There is no other possible provider for the deduction from benefit service, as the provision of state benefits is controlled exclusively by the state, therefore there is no scope for competition. HMCS is not proposing any fundamental changes to the DB system - this policy is simply an enhancement to existing arrangements with DWP.

## **9. Enforcement, sanctions and monitoring**

A Memorandum of Understanding between DWP and HMCS took effect from 25<sup>th</sup> July 2005 and remains in force indefinitely. The memorandum of understanding sets out the relationship that exists between DWP and HMCS for access to CIS. It sets out the nature and standard of services they will provide one another.

Under the Period of operation in the memorandum of understanding, both parties may negotiate ad-hoc variations on individual services within the agreement. Where both parties agree an ad-hoc variation, the Agreement Co-ordinators shall revise and reissue the relevant paragraph(s) to internal staff.

HMCS will request information from DWP CIS in accordance with Section 125c of the Magistrates' Court Act 1980 as inserted by Section 94 of the Access to Justice Act 1999 and amended by paragraph 240 of Schedule 8 to the Courts Act 2003.

Under the Data Protection Act the DWP is permitted to provide information to other Government Departments as the law permits.

HMCS will treat the information received as confidential and will not permit disclosure to any other party except as required for the purposes of the Section 125c of the Magistrates' Courts Act 1980 as inserted by Section 94 of the Access to Justice Act 1999 and amended by paragraph 240 of Schedule 8 to the Courts Act 2003.

DWP retains the right to monitor and check all aspects of use of its system or the information taken from it by HMCS, their contractor/consultants to ensure that the security and integrity of the departments systems are maintained.

Clearly the lawful basis for access to information will be modified under the proposed new law and the memorandum will be modified to reflect this.

## **10. Implementation and Delivery Plan**

HMCS does not envisage any procurement of IT to upgrade its access to benefit information. The upgrade will be to software on the hardware that is currently used to view offenders details on CIS. DWP will develop the screen that will enable courts staff to access benefit information.

As set out in the memorandum of understanding, DWP will provide HMCS with training material to assist with the training of certain HMCS staff prior to going live.

## **11. Post Implementation Review**

We will continue to monitor management information to determine the effect this change has on the number of DB applications made, the proportion of those that are successful. We will remain in constant discussion with DWP and court staff regarding the effect the changes have on resources, in order to understand any efficiency gains.

## **12. Public Sector Impact Test**

Impact on the public sector would be experienced by court staff and the DWP. For example, court staff make an application for deduction for benefit which is then submitted to DWP who then validate and administer on their IT system.

There will be improved efficiency in the delivery of service between government departments.

While HMCS staff will need training to support familiarisation with the changes to the IT system the change in the law would facilitate, in the long term they will benefit from a system which works more effectively, with fewer delays in the wider enforcement process.

By allowing HMCS access to benefit information before making an application for deduction from benefits, we estimate this will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

## **13. Legal Aid Impact Test**

There would be no impact on legal aid expenditure. Court staff carry out the administrative process of making the application for a deduction from benefit to DWP who then validate and administer on their IT system. This administrative process occurs after a judicial decision has been made.

This policy change would not effect an individual's entitlement to state benefits, DWP rules and regulations set entitlement criteria. The change allows courts to view an offenders benefit status to check if the offender is in receipt of a deductible benefit or no benefits at all, before court staff make an application for a deduction from benefit to DWP.

#### **14. Justice Impact Test**

There would be no impact on the role of the Judiciary. Court staff carry out the administrative process of making the application for a deduction from benefit to DWP who then validate and administer on their IT system. This administrative process occurs after a judicial decision has been made.

This policy change allows courts to view an offender's benefit status to check if the offender is in receipt of a deductible benefit or no benefits at all, before court staff make an application for a deduction from benefit to DWP.

#### **15. Court Impact Test**

We estimate this link will lead to a 40% - 45% reduction in the number of unsuccessful applications for DBs made to DWP in England and Wales. Under the proposed changes, courts would check the benefit status of an offender before making an application, enabling court staff to save themselves and DWP valuable processing time, by sifting out offenders who are not in receipt of a deductible benefit or no benefit at all.

Court staff would know that applying for a DB is not a viable option because of the benefit status of the offender, thereby allowing courts to begin the process of instigating an alternative enforcement option with immediate effect.

#### **16. Summary and Recommendation**

To allow HMCS enforcement staff access to offenders benefit status at default will enable them to determine if a deduction from benefit is the appropriate intervention and should increase the numbers of successful applications made to DWP. We expect the change will improve efficiency and business performance both in the courts and DWP, as DWP offices may see fewer applications made.

We estimate this link will lead to a 40% and 45% drop in the number of unsuccessful applications for DBs made in England and Wales. This therefore has the potential to bring efficiency gains to both departments.

This policy change will improve compliance with the orders and increase the amount of fine revenue collected. Ultimately the aim of this change is to improve the effectiveness and credibility of fines as a sentence.

#### **Declaration and publication**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Rt Hon Harriet Harman QC MP  
Minister of State  
Ministry of Justice  
13 June 2007**

## **INITIAL PUBLIC SECTOR REGULATORY IMPACT ASSESSMENT**

### **1. Title of proposal**

Statutory basis for the Prisons and Probation Ombudsman (PPO).

The formal title of the post-holder will be 'HM Commissioner for Offender Management and Prisons'. However, like the Parliamentary Ombudsman, he will be a 'Commissioner' for legislative purposes but an 'Ombudsman' in daily parlance (the Parliamentary Ombudsman was established in statute as the Parliamentary Commissioner for Administration).

This measure will be part of the proposed Criminal Justice Bill. Some consequential amendments to the Parliamentary Commissioner Act 1967 will be required to remove from the Parliamentary Ombudsman's jurisdiction any matters which fall within the jurisdiction of the PPO. Minor consequential amendments to other legislation will be necessary to facilitate information sharing with other bodies. A measure to put the PPO on a statutory footing was previously included in the January 2005 Management of Offenders and Sentencing Bill, but the Bill did not progress due to the calling of the General Election.

### **2. Purpose and intended effect**

To provide an enhanced structure for:

- adjudication of complaints from offenders and immigration detainees;
- scrutiny of deaths of prisoners, young persons detained in Secure Training Centres, residents of approved premises and those in immigration detention accommodation;
- supporting the Coroner's inquest in fulfilling the investigative obligation arising under Article 2 of the European Convention on Human Rights in relation to such deaths; and
- investigation of particular incidents or matters of concern on request by the Secretary of State.

The above functions are currently performed by the PPO on an administrative basis. The PPO has proved effective in performing his duties, but he does not possess formal powers of investigation and there is not a clear legal distinction between the Ombudsman and the Secretary of State.

In investigating a complaint, death in custody, or an incident of public concern, the statutory PPO will, if necessary, be able to draw upon robust formal powers to obtain evidence. It is likely that the statutory PPO would evoke these powers only very rarely but they could prove crucial in the event of non-cooperation of witnesses. A clear legal distinction between the statutory PPO and the Secretary of State and a remit enshrined in legislation will give the post-holder more clearly defined independence from the organisations he is empowered to investigate. However, a statutory basis should not fundamentally alter the way in which the PPO's current functions are performed or the level of service provided.

This measure will fulfil a longstanding commitment since 1998 to put the PPO on a statutory footing. This was confirmed in the 2002 Criminal Justice White Paper 'Justice for All'.

### **3. Options**

Two options were considered, including that of taking no action.

1. Do nothing. The PPO will continue to perform his functions on an administrative basis, and as such there will be no additional impact on other Public sector staff. No groups will be adversely affected by this option.
2. Put the PPO on a statutory footing with formal powers of investigation. There will be no significant impact on other Public sector staff (there are currently very high rates of cooperation with the PPO's investigations and a statutory basis should not fundamentally alter the way in which the PPO's current functions are performed or the level of service provided). No groups will be adversely affected by this option.

Other bodies that provide services in relation to offenders on behalf of NOMS will come within the statutory PPO's remit in respect of those services, and so will be required to co-operate in the resolution of complaints and investigation of deaths and incidents of concern. These bodies would be expected to respond to recommendations made by the statutory PPO. As commissioning and contestability is fully implemented and the voluntary and private sectors take a greater role in the delivery of NOMS services the statutory PPO's remit will extend to these providers. However, organisations that provide services in relation to offenders on behalf of NOMS are currently within the remit of the PPO, so a statutory basis will not place additional demands on the resources of these bodies.

#### **4(a) Benefits**

The PPO is currently an administrative Home Office appointment separate from the Prison, Probation and Immigration Services. His office relies for its effectiveness on its reputation for wholly impartial investigations, and it has proved itself effective.

However, an advantage of the second option is that a statutory PPO will possess robust powers to obtain evidence. It is likely that those powers would be invoked very rarely. However, in the event of non co-operation on the part of key witnesses, recourse to these powers may prove crucial to the effectiveness of an investigation.

A further advantage of the second option is that a statutory PPO will possess enhanced independence and status in law. There will be a clear legal distinction between the Ombudsman for NOMS and the Secretary of State and the fundamentals of his remit will be enshrined in legislation.

**Therefore, the second option was adopted because of the enhanced powers and independence of a statutory PPO.**

A framework document on proposals to put the PPO on a statutory footing and include the investigation of deaths within his remit was circulated in May 2003 to a broad range of government and non-government interests. Responses to the consultation exercise were generally supportive. There was strong support for placing the PPO on a statutory footing. The majority of respondents supported the proposal to include the investigation of deaths within the PPO's remit, although some expressed reservations about aspects of the proposal, and a few recommended that another existing or new body would be more appropriate for the task.



#### **4(b) Costs**

A weakness of the first option is that the PPO does not possess formal powers of investigation. To effectively perform his functions, he relies on good investigative practices and the contractual obligations of staff to ensure co-operation. A further weakness is there is not currently a clear legal distinction between the PPO and the Secretary of State, which some may perceive as lessening the PPO's independence.

The first option is cost neutral. The second option would also not incur any additional costs. Adequate resources have previously been made available to the Prisons and Probation Ombudsman to perform the functions that will be placed on a statutory footing. The expectation is that any changes to the PPO's publicity materials to reflect changes to its powers and status will be delivered within existing resources. See Annex.

#### **5. Monitoring and evaluation**

It is not considered necessary to develop additional monitoring and evaluation arrangements. A statutory basis should not fundamentally alter the way in which the PPO's current functions are performed or the level of service provided.

The PPO currently has well developed systems for internal monitoring and evaluation of performance. For example, data is collected on the timeliness of complaint and death investigations, the subject matter of each complaint, and the apparent type of cause of each death case.

The PPO also publishes an annual report that provides detailed information on his performance in investigating complaints and deaths over the reporting year. The annual report contains information on the PPO's expenditure, summarises a number of completed investigations, and provides an opportunity for the post holder to publicise any issues of concern.

#### **6. Contact point**

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Annex

<b>A.</b>	<b>Measure</b>	Statutory basis for Prisons and Probation Ombudsman
<b>B.</b>	<b>Implementation costs</b> <i>[Indicate in which year(s) they will be incurred]</i>	Capital: Nil Revenue(running): Nil
<b>C.</b>	<b>Total operating costs</b> [Express these as an annual figure with the variations in the next three years]	Capital: Nil Revenue(running): Nil
<b>D.</b>	<b>Assumptions</b>	Adequate resources have previously been made available to the Prisons and Probation Ombudsman to perform the functions that will be placed on a statutory footing. The expectation is that any changes to the Prison and Probation Ombudsman's publicity materials to reflect the changes to its powers and status will be delivered within existing resources.
<b>E.</b>	<b>Main elements of the running costs</b>	NA
<b>F.</b>	<b>Cost-savings</b>	Nil
<b>G.</b>	<b>Cost owner</b>	NA
<b>H.</b>	<b>Transferred costs</b>	NA

I.	<b>Other resource impact(s)</b>	<p>Staff working in the Prison, Probation and Immigration services are currently within the remit of the PPO. Statutory footing will not place additional demands on staff, including those in front-line delivery posts.</p> <p>Other bodies who provide services in relation to offenders on behalf of NOMS will come within the statutory PPO's remit in respect of those services, so will be required to co-operate in the resolution of complaints and investigation of deaths and incidents of concern. These bodies will be expected to respond to recommendations made by the statutory PPO. As commissioning and contestability is fully implemented and the voluntary and private sectors take a greater role in the delivery of offender management services the statutory PPO's remit will extend to these providers.</p> <p>However, organisations who currently provide services in relation to offenders on behalf of NOMS are within the remit of the PPO at present. Statutory footing will not therefore place additional demands on the resources of these bodies.</p>
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## **Regulatory Impact Assessment Youth Conditional Caution**

### **1. Title of proposal**

Youth Conditional Caution

1.1 Objective: to extend the availability of Conditional Cautions to 16 and 17 year old young offenders

### **1.2 Purpose and intended effect**

The aim of the proposal is to reduce the number of children being taken to court for a low-level offence by creating an alternative mechanism for bringing young offenders to account and addressing underlying criminogenic factors. In the interests of justice, such a mechanism should be robust and tackle the causes of offending; it should provide confidence and satisfaction to victims, witnesses and the community; it should be procedurally simple, swift and less costly; it should be equitable and proportionate.

### **1.3 Background**

The “Final Warning scheme”<sup>1</sup> has been effective in reducing re-offending but there is concern amongst practitioners – echoed by the Audit Commission and other reports – that the “two strikes and you’re out policy”<sup>2</sup> is too restrictive and is leading to too many young people going to court and getting convictions for relatively minor offences. Whilst we do not want a return to repeat cautioning there is scope for considering a third citeable strike in the form of a “Conditional Caution”, akin to the adult disposal. This would be in keeping with the Audit Commission recommendation for prosecutorial handling of some lower level cases which currently end up in court.

1.4 The Conditional Caution is a pre court disposal administered by the Police following review of the case by – and the consent of – the Crown Prosecution Service. It allows an offender to be given a caution, rather than face prosecution, on condition that he or she complies with agreed requirements. Failure to comply usually results in prosecution for the original offence.

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<sup>1</sup> The Crime and Disorder Act 1998 created the reprimand and Warning, although “Final Warning” is the term commonly used. In the proposed system it will be useful to revert to the statutory term since the Warning will not be the final pre-court disposal available to children.

<sup>2</sup> The phrase “two strikes and you’re out” is misleading for a number of reasons e.g. a young offender may bypass the Reprimand and be given a Warning for a first offence if it is deemed insufficiently serious for prosecution but too serious for a Reprimand. In addition, juveniles may be issued with Penalty notices for Disorder and Fixed Penalty notices, which do not count as a ‘strike’. Use of the gravity matrix, weighing up seriousness and risk of re-offending, is a more appropriate model for judging what disposal is appropriate in particular circumstances.

- 1.5 The proposal that the Conditional Caution can be extended to young people at this stage aimed at 16 and 17 year olds was presented to the NCJB on 24 January 2006 as part of the Solicitor General's pre court diversions strategy. It was endorsed by the Board in principle, subject to legislation. Baroness Scotland wrote to the Domestic Affairs Committee (DA) to seek formal Cabinet approval, which has been agreed.

## **1.6 Rationale for Government Intervention**

It is expected that introducing the Youth Conditional Caution may in the immediate term reduce the burden on courts, whilst ensuring rigorous intervention, and in the longer term may help to reduce the custodial population by providing more intensive interventions at an earlier stage in a young person's offending career.

## **2. Options**

There are two options available:

- (i) Introduce legislation to make available the Conditional Caution to 16 and 17 year olds; or
- (ii) Not to introduce legislation

## **3. Costs and Benefits**

### **Sectors and Groups affected**

#### *Youth Court*

- 3.1 Removing low level uncontested cases from court will allow magistrates to focus their time on contested and more serious cases, where their deliberative and adjudicative functions add most value.
- 3.2 The Youth Conditional Caution has the potential to divert from court a number of young offenders who currently plead guilty to a low level offence and receive a 'first tier' sentence. (See Cost Benefit Analysis at Appendix A.)

#### *Crown Prosecution Service (CPS)*

- 3.3 The CPS will not have to deal with the young offender in court or prepare court papers, but CPS prosecutors will be involved in deciding which cases are suitable for a Youth Conditional Caution and then deciding, in consultation with the YOT where appropriate, what the conditions should be. CPS prosecutors will also administer the caution

and may be involved in follow-up action to ensure the conditions have been completed or deal with cases where a breach occurs.

- 3.4 Given that any model of the Conditional Caution will involve giving prosecutors powers currently exercised by the courts, it is inevitable that the CPS will have a greater front end role in individual cases. This increased workload should be offset by a reduction in CPS time at court and travelling but the Cost Benefit Analysis, at Appendix A, suggests an overall cost increase for the CPS.

#### *Police*

- 3.5 The expectation is that the Youth Conditional Caution will save police resources as shown in the Cost Benefit Analysis.

#### *Youth Offending Teams (YOTs)*

- 3.6 Under the Youth Conditional Caution YOTs will be required to intervene in circumstances where they would most likely have had to anyway. For example, the Youth Conditional Caution aims to divert a number of young offenders who would otherwise have received the minimum three month Referral Order. Because of proportionality, the period of YOT oversight and the stringency of the YOT intervention should be less than otherwise required by the Referral Order.
- 3.7 However, where a Conditional Caution is given where the offender might otherwise have received a fine or discharge, the YOTs workload may increase. This should be offset by the longer term benefits of reduced re offending through effective intervention. In overall terms however the Cost Benefit Analysis shows savings for YOTs.

#### *Victims and Witnesses*

- 3.8 One of the benefits of the adult Conditional Caution, and by extension the Youth Conditional Caution, is the speed with which an offence can be 'brought to justice' and an offender 'held to account', allowing victims to get on with their lives.
- 3.9 Delays at court are one of the most common reasons for victim dissatisfaction; diverting lower level cases from court will increase the capacity for courts to take other cases forward more swiftly therein reducing delays which should improve victim satisfaction. The restorative element of the Youth Conditional Caution will further contribute to victim satisfaction.
- 3.10 The adult Conditional Caution Code makes it clear that the victim's view must be taken into consideration by prosecutors when determining whether a Conditional Caution is suitable and this will be mirrored in the Code of Practice for the Youth Conditional Code.

## **Costs**

- 3.11 The costs of the disposal have been quantified within the Cost Benefit Analysis, see Appendix A. The true/full benefits of the disposal cannot be identified until the disposal has been piloted therefore the Cost Benefit Analysis needs to be viewed with the caveat that the analysis is largely assumption based and costs will be no doubt be subject to change. A more accurate measure of the costs involved in the disposal can be carried out during the pilot. Some sensitivity analysis has been carried out that enables us to see how changes in different variables, for example relaxing some of the assumptions made in the Cost Benefit Analysis, may affect the cost saving of a Youth Conditional Caution per case.
- 3.12 The Cost Benefit Analysis cites the total average net saving of the Youth Conditional Caution, per offender, as £431.67. This figure has been drawn from assumption based analysis; the total cost saving per Youth Conditional Caution uses an average cost of all the base cases in the analysis – comprising of the sentences which might currently be appropriate for a Youth Conditional Caution – weighted by the probability of them occurring. Also included in the CBA is a distribution analysis of the net savings by the Police, Courts, CPS and YOT's.
- 3.13 The Cost Benefit Analysis estimates the total cost savings from this policy as £749,805.92 per annum.

## **Benefits**

- 3.14 There are considerable benefits to be gained from adopting the proposal; transfer of prosecutorial powers means the courts will be trying fewer offenders for low level offences. The Crown Prosecution Service should spend less time within the Youth Conditional Caution process than in the prosecution process. Young offenders will have an opportunity to make amends for their offending behaviour and seek help for underlying causes. Victims and witnesses will see the offence 'brought to justice' and the offender 'held to account' sooner and victims will also get compensation sooner and will have the opportunity to take part in a Restorative Justice process which research suggests can be very effective in enabling the victim to 'move on'.

## **4. Small Firms Impact Test**

- 4.1 With the exception of high street law firms, Youth Conditional Cautions are not likely to impact directly on small firms. Smaller firms may be affected due to an increase in the number of cases diverted from court. This may have a negative effect on the potential of each case to earn money (or legal aid) for the firm. It has not been possible to draw on the figures for legal aid costs from the adult conditional cautions to draw a precise comparison for future legal aid costs for young people but the expectation is that it will be revenue neutral.

- 4.2 Appropriate Voluntary Sector Organisations (VSOs) will have the opportunity to deliver services as part of the Youth Conditional Caution scheme. For example, offenders who have committed an alcohol related offence could be referred to a VSO which specialises in dealing with alcohol counselling as a condition for non prosecution. This has happened in the adult scheme and it is sensible to adopt the lessons learnt there.
- 4.3 OCJR strategy team and SPT have conducted meetings with a number of businesses to discuss approaches to tackling crime, such as shoplifting. The retail outlets consulted displayed a preference for Penalty Notices for Disorder because they were quick and dealt with the offender there and then. They also acknowledged that, although Conditional Cautions are less immediate, they can seek to address the causes of the crime and are speedier than a court trial. Because a substantial proportion of retail theft is repeat offending, shops spoke positively of the need for more complex disposals that address the causes and impact of offending behaviour if this helped to reduce re-offending. In these regards the Youth Conditional Caution would serve as a useful vehicle.

## **5. Competition Assessment**

Not applicable.

## **6. Enforcement and Sanctions**

- 6.1 It should not be assumed that every incidence of non compliance with a condition will result in a breach of a Youth Conditional Caution and a subsequent prosecution. Failure to comply with a Youth Conditional Caution may lead to prosecution for the original offence; or the prosecutor may vary the conditions, or the Youth Conditional Caution may remain as originally agreed or the prosecutor could determine that a prosecution is not in the public interest. In each case the CPS will decide whether the public interest test has been satisfied. This is consistent with enforcement conditions for the Adult Conditional Caution. A separate Code of Practice will be developed for the Youth Conditional Caution.
- 6.2 It is difficult to determine risks involved in the implementation of enforcement sanctions prior to the pilot of the Youth Conditional Caution. We have ensured a number of safeguards are in place to protect the interests of the young person concerned.
- 6.3 Guidance for the Youth Conditional Caution will be contained within a Code of Practice. They will be developed between the Ministry of Justice and stakeholders (CPS, YJB, police and others).



## **7. Monitoring and Evaluation**

- 7.1 The Youth Conditional Caution will follow a pilot approach akin to the adult Conditional Caution. The pilot will be followed by an evaluation of the scheme which will inform the implementation, delivery, monitoring and future evaluation of the Youth Conditional Caution prior to any decision about national roll out. There will be a number of strands to the evaluation but the methodology cannot be detailed at this early stage.
- 7.2 We are currently in ongoing discussions with the Pre Court Diversions Team and the Police regarding the bespoke development of Police National Computer user requirements for the Youth Conditional Caution. We intend to trial the user requirements in the pilot.
- 7.3 The evaluation process will include examining the range of factors used when young offenders decide whether to accept a Youth Conditional Caution.

## **8. Consultation**

- 8.1 A project team was created comprising representatives from across the Criminal Justice System, including:
- OCJR Justice and Enforcement Unit (now Project Delivery Unit)
  - OCJR Finance and Strategy Unit
  - Home Office Youth Justice and Children's Unit
  - Home Office Legal Advisor's Branch
  - Crown Prosecution Service
  - Association of Chief Police Officers
  - Youth Justice Board
  - Youth Offending Team representative
  - Crime and Drug's Strategy Unit
- 8.2 The project team have reported to the Diversions Steering Group comprising senior policy leads from across the CJS departments, ACPO and YJB. This work stream has also fed into the *Criminal Justice - Speedy Simple Summary review* and Respect Agenda.
- 8.3 The proposal to extend the Conditional Caution to 16 and 17 year olds is supported by ACPO, CPS and YJB, as well as policy leads in the Home Office and OCJR. Preliminary discussions with the Magistrates' Association have identified principled objections to removing cases from court, although this relates more to the overall concept of prosecutors having quasi judicial authority, rather than any specific part of the process.

## **9. Public Consultation**

- 9.1 We have not deemed there to be a requirement to formally carry out a public consultation in relation to the impact of the proposal in terms of costs and benefits. However, stakeholders whom the policy will impact on have been involved in its development and their concerns have been taken into consideration. Consultation has been considered appropriate on equality issues and a number of organisations have been approached for consultation on how to best meet equality obligations in the proposal.
- 9.2 Both OCJR and DCA have commissioned research with the public that has informed the development of the policy. Promise conducted a qualitative project, commissioned by the DCA, to <sup>3</sup>“explore public understanding of the concept of ‘summary justice’ ” with a view to gaining a better understanding of how the public feel about the idea of administering justice outside of the court system for low level offending. The report identified that the public are very concerned about crime in general and would like to see the courts act more quickly and effectively. If summary justice can potentially free up the courts to address more serious crimes then this would appeal to the public.
- 9.3 Following the McInnes Review<sup>4</sup> OCJR commissioned a Mori Poll into Public Attitudes to Alternatives to prosecution in England and Wales. The findings indicate that all alternatives to prosecution were preferred to sending an offender to court for lower level offences and on balance the public favoured rehabilitative disposals.

## **10 Equality Impact Assessment**

- 10.1 The EIA has been prepared and will be presented as a separate document.

## **11 Summary and Recommendation**

- 11.1 We recommend that legislation to extend Conditional Cautions to 16/17s should proceed in view of the benefits that will accrue to them by not being dealt with in court and the overall cost saving to the Criminal Justice System.

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<sup>3</sup> Research Report *Acceptance and understanding of the principles of Summary justice among the general public*, Promise, May 2006

<sup>4</sup> The McInnes Review of Summary Justice, reported in 2004, examined the provision of summary justice in Scotland including an examination of the use of alternatives to prosecution. The Mori Poll on *Public Attitudes to Alternatives to Prosecution*, April 2006, draws on the experience of the McInnes Review.

## **12 Ministerial Sign Off**

- 12.1 I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Bridget Prentice  
Parliamentary Under Secretary of State  
Ministry of Justice  
June 2007**

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## **CRIMINAL JUSTICE BILL**

### **EXTENSION TO THE POWERS OF DESIGNATED CASEWORKERS (DCWS)**

#### **REGULATORY IMPACT ASSESSMENT APRIL 2007**

#### **1. PURPOSE AND INTENDED EFFECT**

##### **Objective**

1.1 The overall objective of the proposed legislative change is to remove certain statutory exceptions which currently limit the types of case and hearing in which the Crown Prosecution Service (CPS) Designated Caseworker (DCW) may be the advocate, thereby extending their remit to prosecute a wider range of offences in the magistrates' courts.

##### **Background**

1.2 The CPS aspires to deliver a high quality service within the resource constraints set for it. DCW deployment is now established as an efficient and effective means of dealing with straightforward advocacy in the magistrates' courts. This approach enables CPS lawyers to focus more effectively on the provision of advice and devote more time to Higher Court Advocates (HCAs) to undertake more prosecutions before the Crown Court.

1.3 The proposed amendment to the Prosecution of Offences Act 1985 (the Act) is considered essential in order to maximise flexibility around the coverage of appearances in the magistrates' courts. It is also a key element in the CPS wider preparation in anticipation of changes to the offence profile of the magistrates' courts caseloads.

##### **Rationale for government intervention**

1.4 As part of the CPS over-arching advocacy strategy the Service is currently pursuing an initiative to increase deployment of DCWs year on year. The initiative is planned to secure DCW coverage of 30% of all magistrates' courts' sessions by 2009/10. However, this is likely to be optimum achievable within the existing DCW remit, and to ensure maximum flexibility to deploy staff in the most appropriate and cost effective way, the CPS must consider extending the role of DCWs to cover a wider range of offences and, it follows, hearings in the magistrates' courts.

1.5 In the event that CPS were not successful in obtaining a legislative change, then this would effectively cap DCW coverage at 30% of all magistrates' courts' sessions. This would have an adverse effect on the over-arching advocacy strategy by limiting the release of lawyers to focus on more sensitive and complex casework. This, in turn, would impact upon case building processes, hamper the delivery of initiatives such as CJSSS / court diversion and reduce the ability of the Service to deploy their HCAs before the Crown Court. It would not enable the Service to achieve its projected efficiency savings, thereby undermining its ability to deliver on its Corporate Business Plan.

## 2. CONSULTATION

### Within government and the Judiciary

2.1 The Attorney General has consulted with his fellow Criminal Justice System (CJS) ministers. He has also discussed the proposal with the President of the Queen's Bench Division who is the senior member of the judiciary with responsibility for the criminal courts.

### Public consultation

2.2 In view of the nature of the legislative change to what is a pre existing policy and the fact that it is about optimisation of resources leading to efficiency savings within the Crown Prosecution Service, it is not proposed to undertake a public consultation.

## 4. OPTIONS

### **Option 1 – *take no action to expand DCW powers beyond current statutory remit.***

4.1 In adopting this option the CPS would relax certain internal restrictions to allow DCWs to extend into areas of work that are within their statutory remit but are currently excluded through the Director's "General Instructions" issued under the Act. This approach would assist deployment levels to rise in the short to medium term, possibly to an optimum peak estimated to be 30% coverage of available magistrates' courts' sessions. However, the failure to extend the remit of DCWs to counteract anticipated changes to caseload profile (the type of offences / cases heard in the magistrate's courts) will, over time, reduce the number of DCW compatible hearings and impact upon their effective deployment.

4.2 This option would also adversely affect the release of in house lawyers (Crown Prosecutors) to undertake more sensitive and complex casework and, in turn, would impact upon the Service's availability to deploy its HCAs in the Crown Court. The resultant failure to address caseload profile issues would reverse the current position and mean that the CPS would need to commit more Crown Prosecutors to the magistrates court or employ lawyer agents to cover hearings.. Overall this would affect casework handling and have a significant impact on projected efficiency savings.

### **Option 2 – *seek limited legislative change to give DCWs the powers to deal with indictable only cases, "sendings" and transfer of cases to the Crown Court.***

4.2 This option would create significant additional flexibility for the courts in creating wholly DCW compatible court lists, and would enable increased deployment beyond those levels achievable in Option 1. However, similar limitations apply in terms of failing to compensate for the changing work profile in the magistrates' courts.

4.4 Whilst this option would enable limited release of lawyer resources over and above Option 1, it would overall compromise the CPS's ability to optimise its resources.

**Option 3 – seek the full range of additional powers through significant legislative changes, embracing the changes in option 2 and allowing DCWs to conduct trials and a limited range of civil proceedings.**

4.5 This option would provide the CPS with maximum flexibility to deploy its own staff in an appropriate, efficient and cost effective way in the face of the SR2007 flat cash settlement and the changing magistrates' court work profile. In freeing up additional lawyer time for case review and preparation of more sensitive and high profile cases it would actively contribute to improving the case building process and realise the benefits of initiatives such as CJSSS and court diversion. It would drive our advocacy strategy programme enabling greater deployment of HCAs in the Crown Court, including undertaking a greater number of jury trials resulting in efficiency savings across the board.

4.6 Option 3 has received ministerial support from the Attorney General.

## **5. COSTS AND BENEFITS**

### **Sectors and groups affected**

5.1 The implementation of this policy will result in tangible benefits for the CPS through the optimisation of resources and resultant efficiency savings.

5.2 There may be consequential savings in terms of resources for the HM Court Service (HMCS). Such savings are likely to be centred on the current position whereby with a limited remit, court sessions in the magistrate's courts have to be tailored to suit the type of case and hearing in which a DCW may appear before the court. With an extended remit the tailoring of court sessions will, in time (to allow for the training of DCWs in any extended powers), no longer be necessary.

5.3 There is no direct impact on businesses, charities, or victims' groups (voluntary bodies).

### **Costs and benefits**

<b>Measure</b>	<b>Key benefits of preferred option</b>	<b>Benefits</b>
<b>Option 1 – take no action to expand DCW powers beyond current statutory remit.</b>	Short to medium term benefit to the CPS in terms of efficiency savings.	Estimated net savings of £1.5m p/a by 2009/10

Measure	Key benefits of preferred option	Benefits
<p><b>Option 2 – seek limited legislative change to give DCWs the powers to deal with indictable only cases “sendings” and transfer of cases to the Crown Court.</b></p>	<p>Significant additional flexibility around deployment and the freeing of lawyer resources to focus on more serious and complex casework and delivery of CJS initiatives such as CJSSS. Reduced need for lawyer agents in the magistrates courts with resultant efficiency savings</p>	<p>Additional estimated net savings of £1.2m p/a over Option 1 (cumulative net savings of £2.7m p/a)</p>
<p><b>Option 3 – seek the full range of additional powers through significant legislative changes, embracing the changes in option 2 and allowing DCWs to conduct trials and a limited range of civil proceedings.</b></p>	<p>Maximum flexibility to allow optimisation of staff deployment across the courts. Improve case building process with lawyers focused on sensitive / complex casework and able to deliver CJS initiatives such as CJSSS and court diversion. Minimal need for lawyer agents in the magistrates courts with optimisation of efficiency savings across the board.</p>	<p>Additional estimated net savings of £2.3m p/a over Options 1 and 2. This figure is based on the average of a range of possible outcomes (cumulative net savings of £5m p/a)</p>

## 6. SMALL FIRMS IMPACT TEST

6.1 There are no impacts under this category.

## 7. COMPETITION ASSESSMENT

7.1 There are no impacts under this heading.

## 8. ENFORCEMENT, SANCTIONS AND MONITORING

8.1 The extended powers will be enforced through CPS local management.

8.2 Local delivery of the policy and achievement of targets will be monitored centrally through quarterly performance reviews with structured feedback to CPS Areas.

8.2 Internal complaints and discipline procedures will apply where appropriate.

## **9. IMPLEMENTATION AND DELIVERY PLAN**

### **Training**

9.1 Central to the CPS strategy in delivering extended powers and in order to maximise success and mitigate failure of the initiative, the CPS will put in place a robust training package that will build on the current training scheme and equip DCWs with the necessary skills and expertise to undertake the wider range of prosecutorial responsibilities that would fall to them under Options 3.

### **Managing the process**

9.2 The CPS will seek implementation of the amending provisions to The Prosecution of Offences Act 1985 on Royal Assent.

9.3 The implementation of the extended powers will be managed by the CPS through the exercise of the Director's "General Instructions". These instructions issued under section 7A of the Prosecution of Offences Act 1985 govern the work that DCWs may undertake. The CPS will ensure that those exercising extended powers are trained, competent and properly supervised by experienced CPS Crown Prosecutors.

## **10. POST-IMPLEMENTATION REVIEW**

10.1 CPS Areas will be liable for inspection by Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) who will be asked to assess, as part of an inspection matrix, the delivery by the Service of this important initiative.

10.2 The CPS may also commission periodic reviews in conjunction with the Departmental Trade Union Side. There is precedent within the CPS for joint reviews of this nature.

## **11. SUMMARY AND RECOMMENDATION**

11.1 The implantation of this policy through changes to legislation will allow the CPS to deploy their resources more effectively; enable lawyers to focus on more complex and sensitive casework and achieve cumulative net savings estimated at £5m per annum.

## **12. DECLARATION AND PUBLICATION**

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**The Rt Hon the Lord Goldsmith QC  
Attorney General  
April 2007**



## **Partial Regulatory Impact Assessment**

### **Criminal Defence Service amendments to the Access to Justice Act 1999 as part of the Criminal Justice Bill 2007**

#### **1. Criminal Defence Service**

To take forward amendments to provisions on criminal legal aid in the Access to Justice Act 1999:

(a) to make it possible for a right to representation to be granted at an earlier stage;

(b) to widen the power to pilot schemes; and

(c) to make it easier to obtain information from government departments for the purposes of means testing via two statutory gateways with the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC) respectively.

#### **Purpose and Intended Effect**

##### **Objective**

The three provisions outlined above are intended to facilitate and improve the existing process by which an individual applies for and is granted the right to criminal legal aid representation.

The measures at (a) and (b) are in effect enabling powers which will allow the Government to design and test new schemes, and which would require regulations to give them effect. Impact assessments will therefore be carried out once more detailed options about how the new, more flexible power at (a) would be used, or once the detail of any proposed pilot scheme at (b) had been developed. Any design and development work will include an assessment of the impact on public and private bodies, and would include consultation with those groups.

This Regulatory Impact Assessment (RIA) therefore concentrates solely on the proposed creation of two new statutory gateways to allow better information sharing between the Legal Services Commission (LSC) and (DWP) and HMRC.

##### **Statutory gateway with DWP**

Under the current means testing arrangements for those appearing before magistrates' courts, implemented in October 2006, some legal aid applicants can be automatically 'passported' through the new means test if they are in receipt of specific means-tested welfare benefits.

Currently, applications are verified through a 'real time' electronic link from the means testing software used by Her Majesty's Court Service (HMCS) to the DWP's central benefit database. This system relied on an applicant providing correct details of their National Insurance Number (NINO). This is

not always possible, or possible within the required timescales. In order to minimise the risk of delay and maximise the effectiveness of the DWP link, the Government would therefore like to introduce a more flexible mechanism. This would allow court staff to verify benefit status by accessing information regarding all welfare benefits being claimed by the applicant. This process of verification could be done using the name, address and date of birth of the individual concerned. Legislation is necessary to meet the possibility that the defendant might not consent to access to his details being given. As it is necessary to establish a clear legal basis for the sharing of this information, it is proposed to create a statutory gateway.

### **Statutory Gateway with HMRC**

The establishment of the statutory gateway with HM Revenue and Customs (HMRC) will allow for a post grant audit to take place in order to help deter fraud as well as informing the Government's counter fraud strategy.

### **Background**

The legislative provisions regarding means testing are contained in Schedule 3 of the Access to Justice Act 1999 as amended by the Criminal Defence Service Act 2006. The regulatory framework for the new means testing scheme is set out in secondary legislation and was implemented in magistrates' courts on 2 October 2006. The new means test sits alongside the existing 'Interests of Justice' test in determining an applicant's eligibility for criminal legal aid representation in magistrates' courts.

The Government is committed to the principle of means testing and strongly believes that those who can afford to pay for their own defence should do so. This will allow legal aid to be focused on the most vulnerable who cannot afford to pay for a lawyer. In so doing it will help to put the legal aid budget on a more secure financial footing, so that it is able to continue to serve the needs of not only this but future generations.

### **Rationale for Government Intervention**

The Government has a responsibility to ensure that those who cannot meet the costs of their defence are provided with appropriate legal advice and representation, where the interests of justice require. The means testing system is forecast to deliver net savings of £35m per year. Legal aid spending has risen from £1.5 billion in 1997-98 to over £2 billion in 2005 with criminal legal aid providing the driver for the large majority of the increase. The Government believes that those who can afford to pay for their defence costs should be made to do so, and the introduction of a financial eligibility test enshrines this, as well as helping to address the existing overspend on criminal legal aid.

It is essential that the means testing scheme assesses as quickly and accurately as possible the ability of a defendant to pay for the costs of his defence, while minimising the administrative burden on defendants, solicitors, the courts, the LSC and other government agencies. The system needs to

ensure that legal aid is granted correctly to those who are financially eligible, and that adequate measures are in place to protect against fraud or incorrect grant. The scheme has therefore been designed to balance accuracy and the need to protect public funds against the requirement for administrative simplicity. For this reason, the evidential requirements are as light as possible. In addition, certain groups, including those in receipt of specific means tested benefits, are automatically 'passported' through the new means test.

Under the means testing scheme, annual gross income is weighted to reflect household and family circumstances. As a result of this adjustment any defendant with a weighted gross annual income of under £12,007 or less, (the lower threshold), is financially eligible; if this figure is £21,487 or more (the upper threshold) they are financially ineligible. Defendants whose adjusted income falls between the two thresholds are subject to a more detailed assessment that takes into account outgoings such as actual housing costs and actual maintenance costs.

Defendants are automatically 'passported' through the new means test if they are under 16, under 18 and in full time education, or if they are in receipt of Income Support, Income Based Job Seeker's Allowance (IBJSA) or a guaranteed state pension credit. The application forms which defendants sign explicitly seek their consent so that the LSC or HMCS verify the data provided with relevant third parties, including the DWP.

Applications under the 'passported benefits' provisions are verified by court staff through a 'real time' electronic link to the DWP central benefits database from the means testing software used by HMCS. The link checks whether the name, date of birth and NINO provided matches those held by DWP, and gives a 'pass', 'fail' or 'undetermined' response to identify whether the individual is in receipt of a 'passporting' benefit.

It is also essential that the means testing scheme is resulting in grants of criminal legal aid to those who qualify and to confirm that public funding is being correctly used. As part of this, and as part of our commitment to reinforce our strategy to combating fraud, a number of applications will be sampled to verify declared income to ensure that they were eligible for the legal aid they received. By submitting a pay slip, it is possible that some applicants may "hide" other forms of income which, if declared, might make them ineligible. Officials have therefore recently approached employers directly asking them to confirm the income declared in the application. 36% of employers have not responded despite repeated approaches. In addition, the Government is concerned that a number of applicants are declaring they have no income. The Government wants to be satisfied – and be able to satisfy the National Audit Office - that sufficiently robust and effective pre- and post-grant controls are in place.

Without relevant HMRC income information it will not be possible for us to determine whether to further investigate eligibility for applicants declaring no

income, applicants who are self-employed and applicants who may have more than one paid job. To ensure audits are as effective as possible and impose a minimal administrative burden on LSC and HMRC, the Government proposes to establish a statutory gateway to access relevant information held by HMRC about applicants' income.

### 3. Consultation

Consultation took place prior to the implementation of the new means test on 2 October 2006. The Government has consulted with the following: Justices' Clerks Society, Law Society, General Council of the Bar, Legal Aid Practitioners Group, London Criminal Courts Solicitors Association, Criminal Law Solicitors Association, Criminal Bar Association, Magistrates' Association, senior members of the Judiciary as well as groups such as Liberty and Citizens Advice.

Since implementation last October, concerns from legal aid providers about the DWP link have been raised via the LSC's Transfer of Grant Stakeholder Group (which met regularly to look at issues around the means test), through other LSC forums and in correspondence to officials and to Ministers. We have also had feedback from court staff who process applications.

#### *Impact of consultation*

Following on from the earlier consultation, we have already taken interim steps by making some changes to the IT system used by court staff to process applications, and by clarifying guidance to court staff and legal aid suppliers. However, the statutory gateway offers the best long term solution.

#### **Devolution**

This applies to England and Wales only. Scotland and Northern Ireland have separate schemes for the grant of legal aid.

### 4. Options

The Department considered achieving its objectives by means of the following options:

- Option 1 – Do nothing
- Option 2 – Voluntary arrangements
- Option 3 – Introducing primary and secondary legislation

#### *Option 1 – Do nothing*

The current system does allow the information provided by defendants to be matched with that held on the DWP database, and in many cases allows the speedy and accurate processing of applications.

This option would incur no costs, and would involve no changes to existing procedures. There would be no short-term burdens such as new guidance, or getting to grips with new application forms or changes to IT systems.

However, there can be delays in the grant of legal aid where a defendant does not know their NINO, supplies incorrect details, or if there is confusion as to which benefit is received. Delays in the grant of legal aid can lead to delays to the wider court system, with a knock-on impact on other Criminal Justice System (CJS) agencies, as well as for defendants, victims and witnesses. We also have a duty to ensure legal aid is only granted to those who are financially eligible, and to protect public funds.

### *Option 2 – Voluntary arrangements*

The current system requires defendants to consent to their data being verified with third parties, including the DWP. Consent can allow the sharing of relevant information for certain purposes where there is no statutory provision for this. Recognising the importance of protecting individuals' personal information and maintaining confidentiality, government bodies are limited to sharing information only where there is consent, or statutory provision. It would not therefore be possible to design any voluntary scheme.

### *Option 3 - Introducing primary and secondary legislation*

Since implementation of the new scheme, although the link itself and the associated software has performed well, stakeholders have raised a number of practical issues.

For example, currently the link relies on an applicant providing correct details of their NINO. This is not always possible, or possible within the required timescales. Also, if the individual is in custody, for example, and cannot recall his NINO, the processing system would refuse his application, even though he might in fact be financially eligible; this could lead to delays while he re-applied. Many defendants do not correctly recall their NINO, or do not understand if their benefit entitles them to be 'passported' through the means test. For example there has been confusion between applicants in receipt of IBJSA and those receiving contribution based JSA. Equally many defendants mistakenly believe incapacity benefit 'passports' the applicant through the means test.

In order to address these concerns, some changes have already been made to the system. These modifications aim to minimise the risk of data-entry error whilst further practical advice has also been provided to practitioners. In addition, it has been recognised that those held in custody may face particular practical difficulties in securing the required information and evidence related to receipt of a 'passported' benefit. For this reason, where a defendant has been remanded into custody by the court, the rules relating to the provision of the NINO, or proof of the benefit claim, have been relaxed. Further changes to the IT functionality are also being developed. This will help to address the situation where a defendant in custody is unable to sign

on and is therefore removed from the database that day, only to be reinstated, following subsequent contact with DWP.

Nonetheless, in the long-term, to ensure that 'passported' benefit applications can be processed as swiftly and accurately as possible, it is proposed to establish a new statutory gateway. This will allow for access to DWP's database so that court staff can verify whether the applicant is in receipt of a 'passported' benefit or any other type of benefit. This check can be conducted using just the applicant's name, address or date of birth. The gateway will provide a clear legal basis on which relevant information can be shared, and will ensure that the system works as effectively as possible with minimal burden on defendants, solicitors, court staff and DWP staff.

The data sharing arrangements through the statutory gateway with HMRC will ensure that accurate post-grant checks can be conducted to verify that legal aid is only being awarded in appropriate cases. Subject to detailed discussions and scoping work with HMRC officials, the proposal is for officials to be able to access information about levels of earned and unearned income. In light of this information and whether income levels are within an agreed tolerance of what was declared, we will assess whether to further investigate eligibility for the grant. Where HMRC information indicates funding may have been granted incorrectly, we would contact the applicant for confirmation of current earnings. Where it is clear that applicants have provided false information, we may seek to recover costs. HMRC's information is not contemporaneous, but it will provide a valuable indicator of risk. Information from HMRC will also allow us to get a clearer picture of defendant behaviour to inform future policy changes (for example, either to reduce the evidential requirements in low risk applications, or to require more up front evidence where the risk is high). The gateway would also make it an offence to misuse any information shared, in addition to existing protections.

In both cases, the statutory gateways with DWP and HMRC would only allow the sharing of relevant information for the specific purpose of administering the grant of legal aid (a function of the LSC under schedule 3 of the Access to Justice Act 1999). The gateway will set out how the information will be protected, and will make it an offence to disclose or use the information for any other purpose.

## **5. Costs and benefits**

Taken together, the financial consequences of these provisions are assessed to be minimal. There is no immediate cost associated with the provisions on the timing of grant and powers to pilot. Any costs and other impacts will be explored before any scheme is implemented under these provisions.

The two proposed statutory gateways (option 3) is designed to smooth the existing application process, not to change it. There would be no change to the application forms, and only minimal changes to the guidance to explain

the new system. There would therefore be no costs to defendants or to legal aid suppliers. There would be some changes to the IT system used by HMCS and LSC staff, as well as training required to implement these.

It is estimated that the total costs associated with establishing the new statutory gateway with DWP will be no more than £1 million. This broadly breaks down as:

- IT development of access arrangements to DWP Central Benefits Database £500,000
- Development costs to the Legal Services Commission and DWP testing £250,000
- VAT (17.5%) £131,000

Initial scoping work in respect of the gateway arrangements with HMRC is estimated to cost between £60,000 to £100,000. Additional design and build costs will be incurred but it will only be possible to cost these once the scoping exercise is complete.

### *Sectors and Groups Affected*

#### **Public Sector**

While the LSC is responsible for the grant of legal aid in the magistrates' courts, they delegate the day-to-day administration of the scheme to HMCS, and reimburse HMCS for the costs of this. As set out above, a number of practical issues have arisen around the verification of benefit status since the implementation of the means test in October 2006. These issues primarily affect HMCS, as they can cause an increased administrative burden and delay in the processing of applications, and could potentially delay the progress of cases through the courts. While HMCS staff will need training to support familiarisation with the changes to the IT system the statutory gateway would facilitate, in the long term they will benefit from a system which works more effectively, with fewer delays. Whilst the costs of the change will fall to the LSC, they will also benefit in the longer term from an improved system and lower administrative costs as a result.

As holders of the benefit information required for the processing of applications, the DWP will also be affected by the change. They will work with the LSC to design and build the changes to the existing IT system. The LSC will meet the costs to DWP associated with this work.

#### **Businesses**

#### **Legal Aid Providers**

Legal aid providers should benefit from the proposed data gateway. Under the current system, there can be delays to grant where the result is undetermined and where further evidence is therefore required; where a defendant has to apply to Her Majesty's Revenue and Customs (HMRC) to find out his NINO; where there is uncertainty as to whether a defendant is in receipt of a relevant benefit; or where a defendant is held in custody. The new system the gateway will facilitate will remove these problems, and speed the process, and will therefore enable providers to undertake work secure in the knowledge that their client is eligible for legal aid.

### **Consumers**

The proposed change is designed to improve the working of the current system without changing the requirements on defendants. In the future individuals who apply for criminal legal aid or need legal aid should benefit from the improved processing, as delay in the grant of legal aid will be removed. This will ensure access to legal representation at the earliest opportunity.

#### *Voluntary Groups*

It is not anticipated that the proposed new gateway would have any noticeable impact on voluntary groups. We will contact Citizens Advice and similar bodies to ensure they are aware of the changes so they can advise customers of the improvements to the system accordingly, although there will be no changes to the application forms or requirements on defendants.

#### *Race equality*

Magistrates' courts do not routinely collect data on the ethnicity of defendants, but at a general level, statistics suggest that Black and Minority Ethnic groups (BME) have a higher representation as users of the Criminal Justice System when compared to their representation as members of the population as a whole.

In addition, many BME groups tend to have lower incomes on average, and were they to become defendants are more likely to be subject to means testing. However, means testing per se will only disadvantage a particular group if it ignores an element of expenditure common to a specific group. The government is confident this is not the case. The only function of the scheme is to calculate the ability of any defendant to pay for their defence costs.

The Government will consult with stakeholders, including the Commission for Racial Equality and the Equal Opportunities Commission, to gather comments on the proposals.

#### *Disability*

CJS data does not note offender or defendant disabilities, however this Department is of the opinion that disabled defendants will not be differentially affected by the policy proposals. There is a high correlation between



individuals in receipt of disability benefits and receipt of income support (about 80% of those in receipt of incapacity benefit also receive income support). Therefore it is very likely that someone who is severely and permanently disabled will be passportable through the means test.

### *Age*

Currently, the means test in the magistrates' court means that youths who have no income of their own are 'passportable'. Those under the age of 16, or under 18 and in full time education are automatically deemed financially ineligible, as are those in receipt of Pension Credit. No change is proposed to this. In 2003/4, in the magistrates' court the number of youths aged 10-18 subject to criminal proceedings was 100,500 (87,382 males & 13,118 females). This represents just under 20% of the total defendant population. Equally only 4,126 magistrates' court defendants (0.8%) were over the age of 60.

### *Gender*

In 2003/4 female defendants made up just under 15% of defendants proceeded against for non-summary offences. The means test would only impact differentially on men and women if at a benefit unit level the two individuals were treated as separate individuals. For example, if a husband's income makes him ineligible, but his wife who does not work is eligible. However, the current means test does aggregate both income and outgoings, and so the government is confident there is no scenario where either gender would be unfairly disadvantaged. No changes to the aggregation elements of the scheme are proposed.

### **Economic**

Overall, the introduction of the means test in the magistrates' courts is forecast to deliver net annual savings of £35m. The proposed gateway is estimated to cost approximately £1m, but in the longer term will cut administrative costs and minimise the potential for delays, which have an associated cost for the CJS agencies affected.

### **Environmental**

There will be no environmental impact associated with the proposed change.

### **Social**

Criminal legal aid is intended to provide legal assistance and representation to vulnerable groups who may otherwise be at risk of social exclusion. The proposals outlined in this Impact Assessment are not intended to alter, reduce or remove that entitlement from these groups.

The issues assessed here are primarily concerned with managing the process of legal aid more effectively.

## **6. Small Firms Impact Test**

There does not appear to be a significant impact on small businesses.

## **7. Competition assessment**

The proposal is likely to have little or no effect on competition.

## **8. The Legal Aid impact test**

**Means testing in the Magistrates' court is forecast to save £35 million annually. This breaks down as:**

- £58 million - Gross Savings
  
- MINUS
  
- £13 million - Additional Cost to Central Funds
- £5 million - Administration Costs of the new scheme
- £5 million - Cost of the Early Cover Scheme
  
- £35 million - Total Net Savings

The model on which the savings forecast is based uses data from the Family Resources Survey (FRS). The FRS is a national survey undertaken annually by the Department for Work and Pensions. It involves a random sample of approximately 27,500 private UK households and contains the necessary detailed financial and household information required for developing and testing different options for means testing.

Although there are costs to the LSC, estimated at £1 million, of improving the DWP link in terms of IT changes, staff time, guidance to courts and initial delays, in the longer term this should reduce administrative costs. Where there have been incorrect grants made the HMRC gateway will help to track them down.

Initial scoping work in respect of the gateway arrangements with HMRC is estimated to cost between £60,000 to £100,000. Additional design and build costs will be incurred but it will only be possible to cost these once the scoping exercise is complete.

## **9. Enforcement, sanctions and monitoring**

There will be ongoing monitoring of processing times and savings by the Steering Group, comprising representatives of LSC, HMCS and Ministry of Justice (MoJ), which is responsible for overseeing the Service Level Agreement between the organisations governing the processing and granting

of legal aid. In addition, the LSC will carry out regular audits as part of its anti-fraud strategy. The National Audit Office (NAO) will also monitor the performance of HMCS and the LSC.

Data sharing with HMRC will allow us to verify post grant that applicants were eligible for legal aid. This is particularly important in high risk cases such as where the applicant is self-employed or has declared they have no income, where there are no other independent bodies who can verify the information which has been given. The intelligence gathered will be used to inform LSC whether further enquiries are required of the applicant where eligibility may be in doubt and should these further enquiries reveal that the applicant was not eligible, they will be prosecuted and the LSC will seek to recover their costs.

## **10. Implementation and Delivery Plans**

IT implementation changes are dependent on the Business Implementation plans. It is estimated that the IT for both DWP and the LSC could be completed within a 6 month timescale, once the full business requirements have been finalised and approved by all parties. Realistically, we would be looking at an implementation date sometime between April and October 2008.

HMRC and LSC have recently conducted a trial exercise to establish the effectiveness of data sharing, this has given a high level of assurance that legal aid has been granted correctly.

## **11. Administrative Burdens and Compensatory Simplification**

The proposals set out here are not intended to create additional burdens on legal aid providers or the public sector. The data sharing proposal will simplify and reduce the burden of rechecking queries in relation to an applicant's benefit status. The ability to issue provisional certificates will benefit the LSC and legal aid providers by starting the process earlier although initially this will require some adaptation with process change.

## **12. Summary and Recommendation**

Option 3 is recommended. The estimated £1m cost of the data gateway and short term impact of changes to the IT system used by court staff is outweighed by the improved service it will deliver. This will benefit defendants and legal aid providers, minimise the risk of delay to the CJS and in the longer term reduce the administrative burden on HMCS.

## **Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Vera Baird QC MP  
Parliamentary Under Secretary of State  
Ministry of Justice  
21 June 2007**

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## REGULATORY IMPACT ASSESSMENT

### 1. Title

1.1. Reform of the arrangements under which state compensation is paid for miscarriages of justice.

### 2. Purpose and intended effect.

#### Objective

2.1 To complete the implementation, by way of legislation, of the proposals made in the Home Secretary's Written Ministerial Statement of 19 April 2006, thereby continuing his programme of reform of the arrangements for paying compensation in cases of miscarriage of justice and rebalancing the Criminal Justice System. The full statement is attached as an annex to this RIA.

#### Background

2.2 The statement made on 19 April 2006 abolished the discretionary scheme for compensation for wrongful conviction or charge, leaving the statutory scheme under s133 of the Criminal Justice Act 1988 as the single source of compensation for wrongful conviction payable by the Home Secretary. The statutory scheme meets international obligations under the UN International Covenant on Civil and Political Rights. The scheme places a duty on the Secretary of State to pay compensation where there has been a miscarriage of justice in the form of conviction quashed at an out of time appeal, because of a new or newly-discovered fact not previously known to the person convicted.

2.3 Although the Secretary of State decides whether an individual should receive compensation in respect of a wrongful conviction, the level of any award is a matter for the independent Assessor. The independent Assessor is appointed by the Secretary of State following an open competition (in accordance with the guidance issued by the OCPA) and is someone who is experienced in the assessment of damages.

#### Rationale for Government intervention

2.4 Current pay-outs are counter-productive of public confidence in the criminal justice system. Average payouts of around £250k for victims of miscarriages of justice, against just £5k for victims of violent crime sit uneasily with the commitment to rebalance the system in favour of the innocent victim of crime.

2.5 Where there is compensation payable, the Government believes that overall limits should be applied on what can be paid and how it is calculated, so as to ensure that payments are proportionate, including ensuring a better balance with payments to victims of crime. The Government is concerned to end massive payouts to applicants who have had convictions quashed, sometimes on a procedural technicality, when they may have other convictions, sometimes of a very serious nature. The Government proposes, therefore, to introduce an overall cap of £500,000 for awards of compensation, which is still a very significant sum.

2.6 Some progress has already been made through the independent Assessor, who has taken a more robust approach in taking account of applicants' other

convictions and contributory conduct when making his assessments of compensation. However, the law currently limits such deductions to the amount awarded to the applicant for non-pecuniary loss (essentially, damage to reputation, mental suffering, and injury to feelings). The Government proposes extending the Assessor's power to make deductions because of conduct and convictions from the whole of the award and with the possibility of the award being reduced to a nominal payment in exceptional cases. It will also make provision to provide that the maximum recoverable for loss of earnings to be 1.5 times the median gross annual earnings, the same as for compensation paid to victims of crime.

2.7 The Government has also decided to introduce a 2-year time limit for applications to be made following the quashing of a conviction. The Government proposes that, subject to an exceptionality clause, applications will only be accepted if they are made within 2 years of the conviction being quashed by the Court of Appeal or the date of acquittal if the Court of Appeal has ordered a retrial.

### 3. Options

3.1 **Option 1:** To do nothing further and leave the operation of s133 as it currently stands.

3.2 **Option 2:** To complete the implementation, by way of legislation, of the proposals made in the then Home Secretary's statement of 19 April 2006, thereby continuing the programme of reform of the arrangements for paying compensation in cases of miscarriage of justice and rebalancing the Criminal Justice System.

### 4. Costs and Benefits

#### Sectors and groups affected

4.1 Those affected by these proposals will be those who have had convictions quashed, out of time, and who meet the requirements of S133 of the Criminal Justice Act 1988 for an award of compensation.

4.2 181 convictions were quashed by the Court of Appeal in 2006; against these figures we received only 79 applications for compensation in 2005/6. Around 25 applicants a year are eligible under the statutory scheme and these changes in policy will apply equally to all successful applicants. The eligibility criteria for the statutory scheme meets our international obligations and so will not be changed so it is likely that the number of people eligible will remain the same, although the way their compensation is assessed will be changed.

4.3 An Equality Impact Assessment has been completed.

#### Benefits

4.4

<b>Option 1</b>	<b>Key Benefits</b>	<b>Costs</b>
To do nothing further and leave the operation of s133 as it currently stands.	In all cases successful applicants will receive compensation that puts them back into the financial position as if the wrongful conviction had not taken place	In 2006/7 the cost of statutory compensation was £9m. [ <i>This is a provisional figure awaiting end of year totals</i> ].

Option 2	Key Benefits	Costs
<ul style="list-style-type: none"> <li>• Capping overall award to £500,000</li> <li>• Deductions for criminal convictions and contributory conduct to be applied to the overall award</li> <li>• In exceptional cases restricting the award to a nominal payment</li> <li>• Capping loss of earnings awards to 1.5 times the median gross annual earnings.</li> <li>• Introducing a time limit for making applications</li> </ul>	<ul style="list-style-type: none"> <li>• Fairer, simpler and swifter system</li> <li>• Brings about a better balance with compensation for victims of crime</li> <li>• Makes more appropriate recognition of applicants other criminal convictions</li> <li>• Re balancing CJS generally</li> </ul>	<p>We expect that over time, when all the measures are in place and the outstanding cases have been completed, savings will be around £2.5 million. All the savings will be ploughed back to support victims of crime.</p>

## **5. Small Firms Impact Test**

5.1 Applicants for compensation for wrongful conviction are not required to be legally represented. Some firms of solicitors and accountants who have hitherto represented applicants, and who have been affected by the earlier reforms made in the Home Secretary's statement of 19 April 2006, may decide that the work is no longer profitable. However, it is our view that with the small numbers who will be affected by these proposals there will be no significant impact on business. It is also open to applicants, if it is their wish, to negotiate a success fee with their solicitors and meet this from their eventual compensation.

## **6. Competition assessment**

6.1 The Government do not anticipate any positive or negative effect on competition.

## **7. Enforcement, sanctions and monitoring**

7.1 The independent Assessor will continue to decide the level or quantum of award, which will be binding on the Secretary of State. The Government will monitor the impact of the changes in the level of payments made, the time taken to settle applications and the number of applications made etc.

## **8. Implementation and delivery plan**

8.1. Provision will be made within the Criminal Justice Bill 2007 to implement the proposed changes by way of amendments to section 133 of the Criminal Justice Act 1988.

## **9. Post-implementation review**

9.1 None proposed other than the monitoring proposed above (7.1).

## **10. Summary and recommendation**

10.1 The further changes will complete a package of changes announced on 19 April 2006 to make a fairer, simpler and swifter system. The then Home Secretary announced the intention to legislate to bring about these further changes to the compensation system and therefore the only benefits and savings will come from implementing option 2.

### **Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

Gerry Sutcliffe  
Parliamentary Under Secretary of State  
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20 June 2007

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Miscarriages of Justice compensation



## **Regulatory Impact Assessment**

### **NEW OFFENCE OF POSSESSION OF EXTREME PORNOGRAPHIC MATERIAL**

#### **1. Purpose and intended effect**

##### **(I) Objective**

The objective of this offence is to deter interest in extreme pornographic material by making illegal the simple possession of a limited range of such material which is graphic, sexually explicit, and which contains serious violence or sexualised violence towards women and men. It is intended that this possession offence will only apply to material which would already be illegal to publish or distribute in the United Kingdom under the Obscene Publications Act 1959 (OPA). In particular, actual scenes or realistic depictions of the following activities will be covered:

- a) intercourse or oral sex with an animal
- b) sexual interference with a human corpse
- c) serious violence\*
- d) rape

\* By serious violence, we mean life threatening or likely to result in serious disabling injury.

##### **(II) Background**

Illegal pornographic material has always been available and those who publish and distribute it in the UK risk prosecution under the OPA. There is now some evidence that, with the development of the Internet, the boundaries of the type of pornographic material available is being pushed back with more extreme images being sought after and provided. The development of the Internet and other communication technologies means that access to this material has never been easier, nor has it been available in such quantity. In pre-Internet days, individuals who wished to view this kind of material would need to actively seek it out, bring it into their home in physical form (eg magazines or video-tapes) or have it delivered, risking discovery and embarrassment at every stage. Now they are able to access it from their computers at home (or from their place of work) with relative ease.

The material under consideration in the new offence is of an extreme nature; it does not depict openly consensual sexual activity, or the bondage material which is available in legal pornographic material in the UK. It depicts extreme material of a kind which we believe would be prosecutable under the OPA if it was being openly published or distributed. The underlying premise of the new offence is that this material should have no place in our society and in making its possession illegal, the proposed offence seeks to tackle its circulation.

##### **(III) Rationale for Government Intervention**

It is difficult to accurately quantify the financial impact of the new offence. It is however, believed to be low – due to the extreme nature of the material involved and its limited attraction for most individuals. The material covered will already be illegal to publish or distribute under the OPA, so the only new area of criminality will be its possession. Prosecutions under the OPA 1959, for the publication of such material (and also some further types of material not covered by the present proposals,

except for option A) have fallen over recent years from 131 in 1999 to 35 in 2005, although this may be in part due to the police focus on tackling child pornography and focusing on the main distributors. It is also apparent that tolerance, expressed through the courts, of sexual material which 10 years ago would have been found to be obscene, has increased.

The main risk addressed is that seeking possession of extreme pornographic material is part of a cycle of supply and demand. New technology facilitates the easier distribution of such material, the vast majority of which comes from abroad, thus evading current controls. The new offence will help close the gap in existing controls and tackle demand at source.

## **2. Options Considered during the Consultation**

Option one - adding a possession offence to the Obscene Publications Act 1959

Option two - adding a possession offence limited to the category of material set out in the Consultation Paper but under the umbrella of the OPA

Option three (our preferred option) - a new free standing offence in respect of the category of material set out in the Consultation Paper;

Option four – do nothing.

## **3. Benefits**

For options one to three the proposal to strengthen controls on extreme pornographic material will:

- i) help to protect society, particularly children, from exposure to such material, to which access is increasingly difficult to control.
- (ii) enable the enforcement authorities to take action against individuals who, by procuring such material by whatever means, encourage its further production.

With regard to Option 4 – do nothing – there will be no additional benefit.

## **4. Costs**

Option one would be the simplest in legislative terms, but possibly the most costly approach, retaining the general test of obscenity and amending the 1959 Act to add an offence of possession. However, this would cover a wide range of material and there are difficulties in squaring the purpose of the Act with a simple possession offence. For example, under the OPA whether material is obscene depends on whether it would deprave or corrupt "those likely to read, see or hear it" and this has been interpreted by the courts to mean that the threshold of obscenity can be lower if the likely audience or recipient is a child. This proposal would significantly extend the scope of the OPA, possibly leading to an increase in prosecutions, but would not achieve the clarity which would help individuals to identify material which was clearly illegal, when making personal decisions about viewing pornography.

Option two would offer greater clarity by limiting the material to be covered by the possession offence to the most extreme as set out, such as material which showed (or purported to show) serious sexual violence, bestiality and necrophilia. This could be linked to the OPA so that it formed a sub-set of material covered by the "deprave

and corrupt" test. However, as for option one, there would be a mismatch between the purpose of the Act and the amendment. In addition, there would have been the possibility of confusion for the courts. The scope of the OPA might gradually become limited by reference to the list of proscribed material, so that, over a period of time, only material falling within that defined category would be considered obscene. The flexibility of the test of obscenity which currently allows the Act to deal with material featuring extreme violence (not necessarily with sexual overtones), drug taking, animal cruelty, etc. would be lost. It is believed that, in view of the nature of this material there would only be a small number of proceedings, but, in the light of the issues above these could be time-consuming and costly proceedings.

Option three, (the Government's preferred option) preserves the flexibility of the OPA to deal with the publication of a range of material but allows for the development a new, free-standing offence for possession of a limited category of material. (Anyone publishing or distributing this material within the UK would also be prosecutable under the new offence since they would necessarily also possess it.) The offence is limited to pornographic material, as set out in paragraph 1(l), that is material produced solely or primarily for the purpose of sexual arousal or gratification. It is not the intention to impinge on the freedom of the media in terms of news coverage, or of analysis or documentary footage of real events, including atrocities committed in other countries. It is believed that, in view of the nature of this material there would only be a small number of proceedings and the cost would be "de minimus".

Option four – do nothing – there will be no additional cost but there is a risk of sending a message that the Government believes that the production and acquisition of such material was harmless, or not worthy of attention. In addition, the benefits from the proposals would not be realised, which carries a human cost for individuals and society.

## 5. Costs (CJS)

The following estimated costs have been identified for option 3, based on a projected total of 30 prosecutions per annum where 15 cases were tried in the Magistrate Court and 15 cases in a Crown Court, although it is expected that most trials will occur in the Magistrates Court. The estimated costs also take into account a worst case scenario whereby all defendants get legal aid.

Police Arrest and Charge	-	£10890
Crown Prosecution Service	-	£65192
Legal Aid Costs	-	£127935
Courts	-	£200220
Sub Total	-	£404237

Estimates on custodial impact are based on those derived from the sentencing statistics for offences under Section 160 of the Criminal Justice Act 1988 (Possession of Indecent Photographs of Children) which carries a maximum penalty of 5 years imprisonment. In 2004, 45% of those charged received cautions, 40% of those convicted received community sentences and for those sentenced to imprisonment the average sentence length was 9.8 months. Based on these figures the estimated NOMS costs resulting from 30 successful prosecutions under the new offence would be:

14 cautions	£0
6 community sentences	£19800
Sub Total	£19800

The overall total estimated total cost in the first year to the CJS for prosecution and non-custodial sentences is therefore estimated at £424037.

There are also expected to be 10 Custodial sentences (average of 6 mths) which equates to 5 prison places per annum.

#### *Change to the maximum sentence in the Obscene Publications Act 1959*

The proposals also include an increase in the maximum sentence in the Obscene Publications Act 1959 from three years imprisonment to five years imprisonment. In 2004 there were 30 prosecutions where 14 sentences involved immediate custody, with an average sentence length of 6.3 months. This equates, approximately to 3.675 prison places per annum. The raising of the maximum sentence by 66%, if reflected by a similar increase in sentencing for this offence, would require an estimated further 2.4 prison places.

## **6. Sectors and groups affected**

### *Business*

It is our belief that no major business sector in the UK should be adversely affected by these proposals. The material covered by the new offence is already illegal under the Obscene Publications Act 1959 and cannot be published or distributed for gain. There would therefore be no impact on the legitimate UK adult film, video or computer-game industry, although there may be a small increase in the number of enquiries made by law enforcement to the British Board of Film Classification to establish whether or not a particular film has been classified. The mainstream broadcast entertainment sector would be unaffected as would those with a legitimate reason to possess the material.

It is recognised that there may be some impact for British Internet Service Providers. ISPs act as transporters of information across the internet but they are not responsible for the data itself, as they are unaware of what is being transmitted. (Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002 state that ISP's are protected from civil or criminal action in respect of the unlawful activity of which they have no knowledge).UK ISPs already work with the Internet Watch Foundation, an industry funded body, in removing material which is considered to be in breach of the Protection of Children Act 1978 or the Obscene Publications Act 1959. Depending on the nature of their service, some ISPs see a requirement to train some members of their staff about the new legislation, particularly those involved in filtering services.

In 2006 the IWF received approximately 4000 reports about potentially obscene material, although only a very small number of these were hosted in

the UK. It is currently envisaged that reports about the possession of the material identified by the new offence would also be made to the IWF, as well as local law enforcement, because they already possess great expertise in this area. Numbers of reports are difficult to predict but as this is a possession offence for material which is already illegal to publish and distribute, it is unclear why large numbers of new reports would be made to the IWF, although clearly a rise in reports is likely in the short term. In responses to the consultation the industry asked that clear reporting procedures be developed. Work on this is continuing with the industry and the RIA will be updated when the procedures are completed and agreed with the relevant groups.

### *Citizens*

In recent years there have been a declining number of arrests under the OPA 1959 and information is not available about the ethnic background of those arrested. It is not apparent to us that the proposed changes in the law will have any adverse effect on black and minority ethnic (BME) groups. As part of the consultation, numerous organisations, including BME groups were asked for their views, but none identified any adverse effect on their communities.

With regard to gender, the vast majority of defendants (in 2005, 31 defendants out of 35) who are prosecuted under the OPA 1959 are male. The proposed offence does not distinguish between the gender of the “participants”.

## **7. Small Firms Impact Test**

Small businesses should not be adversely affected by this change in legislation as the commercial distribution of extreme pornographic material within the UK is already illegal, although the offence may make it easier for legitimate businesses to distinguish between legal pornography and clearly illegal obscene material. Where the offence takes place on work premises – ie material is downloaded on an employer’s pc, it is the intention of the offence to apply to the staff involved, who would be regarded as being in possession. Many firms already have Internet access policies, prohibiting the downloading of pornographic material in the workplace but smaller employers are less likely to have internet policies. It is clearly good practice for employers to have Internet Access Policies and, it would appear to us, that there would be minimal cost in doing so. As with other areas of the criminal law, the proposals contain no requirement to put such mechanisms in place.

There has been concern that some firms, for instance companies which develop software to filter material received from the internet, would fall foul of a possession offence if, through testing out their software they came into possession of extreme pornographic material. We believe however that possession under such circumstances would be covered by the defence of legitimate reason which will be included in the legislation.

## **8. Competition assessment**

A competitive filter has not been completed because the proposal concerns the possession of material which is already illegal to publish and distribute.

To the extent that there is competition from companies based outside the UK, which currently sell material in a way which may bypass current controls, there should be some benefit to those firms which are UK based and follow UK legislation.

Concerns were also raised during the consultation that legitimate businesses which sold 'adult' material would be affected by the new legislation. However, the proposals do not affect material which is currently legal to sell and the prohibition extends only to images, not to the use of other sexual paraphernalia. We have no reason to believe therefore that there would be adverse effects on businesses which supply legal material.

## **9. Race and Equality Impact Assessment (EIA)**

There is a legal obligation to equality assess for race, disability and gender impact when public bodies are considering new policies. In line with this obligation a preliminary EIA was completed and it is believed that, in addition to the comments made in section 7, the new offence will not impact adversely on race and disability.

## **10. Enforcement and Sanctions**

The new offence to make illegal the possession of extreme pornography will be implemented through changes in primary legislation and enforcement of any legislation will be the responsibility of the UK law enforcement agencies.

## **11. Monitoring and evaluation**

A scheme to monitor and review the effect of any change in legislation will be put into place after the legislation is implemented. This evaluation will consider the impact on law enforcement, the courts and small businesses.

## **12. Consultation**

A wide public consultation was undertaken. Nearly 400 responses to the consultation were received. The majority of responses received from individuals, were either opposed to Government legislation in this area or felt that the categories in the proposals were too broad. The majority of responses received from organisations were supportive of the proposals. A petition objecting to the presence of extreme internet sites promoting violence against women in the name of sexual gratification containing approximately 50,000 signatures was also received. As a result of the comments received during the consultation the threshold for material to be considered under the new offence was raised from content which included realistic depictions of serious sexual violence or violence in a sexual context, where 'serious' was equivalent to where a prosecution could be brought for grievous bodily harm (in England and Wales) to a higher threshold of life-threatening or likely to result in serious or disabling injury.

The full Government response to the Consultation is available at: <http://www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/?version=1>

## **13. Summary and Recommendation**

This RIA identifies that there will be a risk of a need for increased enforcement activity for all UK enforcement agencies and the courts, but the circulation of extreme pornographic material should be inhibited. Whilst difficult to quantify, the costs and risks to business are expected to be low, because there is only a very small sector of business which comes into contact with this material and it would already be liable to prosecution if it published and distributed the material in the UK. For the reasons

outlined above the Government believes that the Option to create a free-standing offence is the best approach.

**Declaration and Publication**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Gerry Sutcliffe  
Parliamentary Under Secretary of State  
Ministry of Justice  
20 June 2007

## **Regulatory Impact Assessment**

### **Title of the Proposal:**

**A new sentencing order for those convicted of loitering or soliciting**

### **Purpose and intended effect**

#### **Objective**

The new order introduces a more rehabilitative penalty for those convicted of loitering or soliciting in order to deliver an overall reduction in the numbers involved in street-based prostitution. The order will encourage and enable those involved to address the causes of their offending behaviour and begin to explore routes out.

As well as bringing about improvements for those involved in street-based prostitution, particularly in terms of health and safety, an overall reduction in the numbers involved in street-based prostitution will impact on local communities in red light areas in terms of safety and quality of life.

#### **Background**

Prostitution is most commonly defined as the exchange of sexual services for some form of payment, usually money or drugs. This document focuses on the loitering and soliciting offence and concerns street prostitution only.

It is increasingly recognised that those involved in street prostitution exercise little choice. The conclusion that prostitution is more of a survival activity is based on research<sup>5</sup> that shows that the common characteristics of those involved include:

- difficult lives – many reported poor school attendance, as many as 70% spent time in care, and many reported running away from home or suffering periods of homelessness, and:
- problematic drug misuse – up to 95% use prostitution to support their own (and often a partner's) problematic drug use.

Many street prostitutes are trapped by poor education, the need to fund a serious drug habit, the violence and coercion of their pimp/partners, and by very low self esteem which makes it difficult to contemplate any other life choice.

#### **Costs of street prostitution**

The costs of street prostitution include:

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<sup>5</sup> These figures are drawn from a number of small scale studies, as set out in Annex C of *Paying the Price*



- costs to the police and other agencies - to meet the costs of controlling prostitution and responding to reports of anti-social behaviour linked to prostitution. The latter are estimated at around £42m<sup>6</sup>
- costs to the tax payer (through the criminal justice system and the NHS) - high costs arise in a number of different ways:
  - those involved in street prostitution are statistically more likely to be victims of violent and sexual crimes. The Home Office has estimated that the average case of serious wounding results in £1,413 in health treatment costs, whilst sexual offences average £784<sup>7</sup>
  - it is estimated that most of those involved in street prostitution are problematic drug users. It is estimated that each problematic drug user costs the NHS around £1,069 per year
  - costs arising from criminal activity associated with prostitution. For example, in 2005 the cost of police cautions and prosecutions for loitering or soliciting for the purpose of prostitution exceeded £800,000 in criminal justice costs
- costs to those involved in prostitution - costs accrue mainly from the cumulative effects of involvement in street prostitution. This includes long-term physical and mental health problems, poor self esteem and other issues which create barriers to employment, housing and other signifiers of social exclusion

Also taken into account are the emotional and physical costs of being a victim of crime. A serious wounding has been estimated at £4, 773 per case. The equivalent costs of a sexual assault are valued at £18,285.

There are also intangible costs which are estimated to be £2,958 per year per prostitute in relation to their problematic drug use. For those injecting drugs intravenously the costs can be even higher due to the increased risk of infection and disease transmission. A 1999 study of 240 prostitutes found that almost half working outdoors reported injecting drugs<sup>8</sup>

- costs to those involved in prostitution and to local residents - costs accrue from the criminal activities associated with prostitution, including pimping, kerb crawling, drug dealing and public disorder.

#### The current offence

Prostitution itself is not illegal in England and Wales but, in order to address the nuisance associated with street prostitution, it was made an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution (section 1 of the Street Offences Act 1959).

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<sup>6</sup> One Day Count of anti-social behaviour (2003)

<sup>7</sup> Dubourg, R. and Hamed, J. (2005) *Estimates of the economics and social costs of crime in England and Wales: Costs of crime against individuals and households*, 2003/04, Home Office Online Report 30/05. The figure in the report was uplifted to 05/06 by the GDP deflator.

<sup>8</sup> Godfrey, C et al (2002) *The economic and social costs of Class A drug use in England and Wales 2000*, Home Office Research Study 249. The figure in the report was uplifted to 05/06 by the GDP deflator..

The archaic terminology of 'common prostitute' is widely considered to be offensive and stigmatising. A further difficulty is that, as the offence is a low level one, a fine is currently the only penalty option that sentencers consider. The law is widely considered to have little or no deterrent or rehabilitative value. Rather, it may have a perverse incentive in that the imposition of a fine requires the offender to be involved in further prostitution in order to pay.

#### Current enforcement

Criminal statistics show a decline in the number of cautions and prosecutions for street offences.<sup>9</sup> But a local focus on increased enforcement typically only displaces those involved because it fails to address the reasons that keep them on the streets. That displacement may be to other geographical areas or may be into other activities to fund serious drug misuse, including street crime. Once an enforcement sweep ends, kerb crawlers and prostitutes typically return to the area.

#### Voluntary sector partners

Recent research strongly indicates that enforcement is ineffective without support to help individuals to find routes out of prostitution. Dedicated support services are generally run by the voluntary sector, offer outreach services and, increasingly, drop-in services in areas where there is a significant level of street prostitution. There are some good examples of schemes that offer a range of dedicated support services to link individuals into mainstream services and the development of routes out of prostitution. These projects provide help and advice on a whole range of issues, including drug treatment, access to healthcare (including sexual health care), supported housing, debt counselling, education and employment.

#### Consultation:

*Paying the Price*, the Government's consultation paper on prostitution<sup>10</sup> acknowledged that the offence of loitering or soliciting for the purposes of prostitution has been widely criticised for not reducing re-offending. Responses to the consultation reinforced this view, and a new sentencing order is proposed to rectify this situation.

It would be helpful to have a few lines on the stakeholders consulted.

#### Rationale for government intervention

Street prostitution is of serious concern as it can involve anti-social behaviour, serious drug abuse, violence and exploitation and organised crime. However, the current law is considered to have little or no rehabilitative value since the penalty increases the likelihood of re-offending to enable those involved to pay their fines.

The essential difficulty is the mismatch between the requirements of the current sentencing framework and the needs of those involved in prostitution. The offence is low level and, as such, does not reach the threshold of a community penalty. Increasing the seriousness of the offence to reach that threshold is undesirable. The alternative is to introduce a new penalty – outside the sentencing framework – specifically to address this issue.

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<sup>9</sup> see Appendix

<sup>10</sup> *Paying the Price: a consultation paper on prostitution*, Home Office, 2004

Serious drug misuse is not unusual as a major contributory factor to the offending. Nor is a history of abuse and other 'risk' factors unique to this group of offenders. The difference for those involved in prostitution is the complex range of factors that lead them to the streets; the inextricable link between those risk factors and serious exploitation; and the frequency with which that link is established at a very young age.

These factors also make it extremely difficult to leave street prostitution. In short, they present an unusual combination of serious social deprivation and victimhood, and low level anti-social behaviour which constitutes a significant nuisance to the local community. A new solution must be considered if the criminal law is to be effective in tackling the destructive behaviour of individuals involved in prostitution, and in disrupting the sex markets that damage local communities.

#### **Option A Do nothing**

Under this option those arrested for the offence of loitering or soliciting would continue to be fined. The risk with this option is that street prostitution will continue to impact adversely on local communities, and that those directly involved in prostitution will continue to be at serious risk of increasing social exclusion, exploitation, violence - including domestic violence - and problematic drug misuse.

#### **Option B A new sentencing order**

The new order will provide a penalty tailored to the needs of those involved in prostitution. The courts will direct the offender to an identified referral worker who will require them to attend a series of three assessment sessions. The nature of these assessment sessions will depend on the offender's particular circumstances and will be designed to consider, with the offender, how best to address the particular causes of their offending behaviour. The referral worker will act as a link between women in prostitution and sources of expert advice and support.

#### **How the new order will work**

The new order will be available as an alternative to a fine. It will be available at the discretion of the sentencer in any case where, on the evidence before the court and on the advice of the referral worker, the making of such an order is considered likely to be beneficial, and the offender likely to comply with the requirements.

#### **Referral workers**

The order will be sufficiently flexible to enable referral workers to be identified from within a range of organisations. A key element of the prostitution strategy is for local partnerships to ensure that dedicated support projects are commissioned to develop routes out for those involved in prostitution in all areas where they are required. These projects will be well placed to provide the different elements that will be included in the order, and to determine what those elements should be. They have the greatest expertise in dealing with those involved in prostitution; generally have established protocols with the police and mainstream services, including health services; and also offer a key worker approach which will be important in supporting those involved through a difficult challenge, and one in which few feel confident that they can succeed. This key worker approach will be extremely important in terms of encouraging compliance with the orders.

Local projects will often already have had some contact with those referred to them, and may already have begun to develop a trusting relationship with them. On this basis it is likely that, in most cases, referral workers will be identified from within dedicated support projects, and commissioning guidance for local partnerships will include advice on ensuring that this role is included within the remit of such projects.

Where a dedicated project is unavailable, the referral worker may be located in a women's resource centre, or similar organisation familiar with the complex needs of those involved in prostitution. Suitable referral workers will also be identified to deliver orders made in respect of men, or young people (under 18) involved in prostitution. In each case the referral worker will be identified by the police.

The order requires attendance at three sessions with a referral worker. The nature of each session will be determined by the referral worker and will depend on the level of any previous contact between services and the individual, any previous progress towards finding a route out of prostitution, and the particular issues that the individual faces which impact on their involvement in prostitution. In many cases the first session will be used to assess the offender's current situation in terms of drug use, sexual health, general health, access to suitable housing and involvement in prostitution. This will then inform the nature of the subsequent sessions and could include, for example, an assessment from the drug treatment provider, or sexual health counsellor. The aim will be to use the opportunity provided by these sessions to build a foundation to enable the individual to continue to access support and advice to exit prostitution.

#### **Non-compliance**

The referral worker will be required to monitor progress on the sessions and to report back to the court if the individual fails to meet the requirements of the order. Breach of the order will mean that the individual must return to court to be sentenced again for the original offence. In cases where the referral worker considers that some progress has been made, or there is a real prospect of progress in the future, the sentencer may make a further order.

#### **Costs of the new order**

No significant additional costs to the criminal justice system are expected to accrue as every effort will be made to divert those in prostitution from the criminal justice system. Before an individual reaches the stage of prosecution s/he will have been seen and cautioned by the police on 2 or more occasions in the preceding 3 month period, at which point police officers will be advised to signpost individuals to local sources of support and advice. The prostitution strategy also encourages the introduction of a stepped approach in the response to loitering or soliciting, including conditional cautioning and court diversion schemes.

Alongside the formal efforts of the criminal justice agencies, the prostitution strategy envisages that every area with a significant prostitution problem will fund a dedicated support project which, through outreach and other befriending services, will encourage women to voluntarily seek help and support to leave prostitution. The aim is that only those women who are

unable or unwilling to engage with these services on a voluntary basis, or through diversion schemes, or those women who cause a particular nuisance to local communities, will be prosecuted.

The impact on the courts and on NOMS is expected to be minimal. More court time is likely to be needed to issue an order compared to a fine and there are additional costs where the offender breaches the order. These costs will be outweighed, however, by the fall in the numbers of prosecutions (see Benefits of the new order). The impact on legal aid is also expected to be minimal. Very few 'not guilty' pleas are currently entered, and there is little call on the legal aid fund. Given the low level nature of the new penalty, this is not expected to change to any great extent.

NOMS is not expected to have a role in court, nor in terms of commissioning services. The impact on NOMS is likely to be small as the order will be administered by a referral worker, who, as outlined above will usually come from the local prostitution project, or similar.. The costs to the project of the services of the referral worker are again expected to be small as the project will already be offering such services where individuals in prostitution seek them on a voluntary basis. The additional burden on the referral worker will be to attend court to provide advice on the suitability of the order, attend a number of sessions with the offender, and – where necessary – make contact with the court to report a breach. This additional burden could be said to be offset if it can be shown that the introduction of the order speeds up the process of befriending/supporting routes out.

General health service costs may rise as the numbers admitted onto drug treatment programmes may increase as a result of the assessment sessions. The impact, however, is expected to be low as the numbers of orders will be small.

The present value of additional costs of the new sentencing order over the first five years of the order (2008 – 2012) is estimated to be £127,768. Further details can be found in Appendix A.

#### **Benefits of the new order**

In 2005, there were 1,116 convictions for for loitering and soliciting for the purposes of prostitution in England and Wales. The cost of a simple hearing in the magistrates court (where a guilty plea is entered) is estimated at £733. The overall cost of prosecuting this offence if all arrested had pleaded guilty would be £818,028. Allowing for contested cases (although these are thought to be rare) plus the administrative costs of the 927 prostitutes' cautions, the total costs of prosecuting this offence are estimated to be £831,006.

A model has been developed to examine the additional costs and benefits to society of option B compared with option A over a five year period (2008 – 2012). The results are shown in table 2 of the appendix.

It is anticipated that the number of prosecutions will fall following the publication of the prostitution strategy in 2006 and its subsequent implementation, just as happened following the publication of guidance in 2000 in relation to those under 18 involved in prostitution. This guidance stated that prosecution should only be used for those under 18 as a last resort if they 'persistently and voluntarily' return to the streets. This has significantly

reduced the number of prosecutions of those under 18 from a peak of 197 in 1996 to only 1 in 2005. The prostitution strategy makes clear that the focus of enforcement activity should be on those who create the demand for street prostitution, ie kerb crawlers, and that those involved in prostitution should be viewed as in need of help and support. Only where that help or support is refused, and the persistent loitering or soliciting is a nuisance to local residents, is prosecution likely to be appropriate.

There is already evidence of increasing liaison and cooperation between the police and voluntary sector projects which is likely to increase the effectiveness of efforts to support individuals to find routes out of prostitution. The new order will strengthen this approach. If the same proportion of reduced prosecutions were replicated with adult offenders as has been the case with those under 18, then the number of prosecutions could be projected to decrease by 33 per cent each year, falling to around 24 prosecutions by 2012 (five years from the introduction of the order). This would amount to a saving of around £1.2m over 2008 – 2012 compared to the 'do nothing' option.

The true benefits of reducing the numbers involved in street prostitution, however, go far beyond the costs of court hearings:

- violence. Those involved in prostitution are at a high risk of violence from both clients and partners/pimps. One study found that 66 per cent of women involved in street prostitution in three UK cities had experienced client violence. They most commonly reporting being slapped, kicked or punched, but 28% reported attempted rape
- poor health and quality of life. Research suggests that those involved in prostitution who also share injecting equipment are at high risk of HIV infection. There are also reported to be high rates of Chlamydia, gonorrhoea, abnormal cervical cytology, terminations, infertility and Hepatitis C as well as pain, discomfort, anxiety and depression
- drug misuse. Outreach providers and law enforcement, agree that as many as 95 per cent of those involved in street prostitution do it to fund drug use. There are also strong links between street prostitution and local drug markets, with those controlling prostitution also involved in drug supply and dealing. This has implications for the children of prostitutes, with greater numbers at risk or in care
- neighbourhood nuisance. There are significant risks to neighbourhood renewal and safe communities through harassment, noise, prostitution and drug-related litter (including used condoms and dirty needles) and a decline in public order. The review confirmed the negative impact the existence of street prostitution can have on a local community. Prostitution can also affect communities through increased traffic, noise and disruption, and neighbourhood reputation

It is hoped that one result of the order will be an increase in the number of prostitutes voluntarily exiting the sector. A five per cent increase in the exit rate each year is expected to result in benefits of £1.5m to society over 2008-2012 (Appendix A).

#### **Net benefits of the new order**

A model was developed to examine the additional costs and benefits to society of the new order compared with the 'do nothing' option over a five year period (2008 – 2012). The results indicate the intermediate benefits, largely made up of savings to the criminal justice system, outweigh the costs, giving a net benefit of almost £1.2m in 2008 – 2012. The intermediate net benefit is largely dependent on the increase in the rate of current decline in loitering or soliciting prosecutions as a result of the order. If the increase in the rate of current decline was less than expected, the intermediate net benefit will fall.

The results also suggest that total benefits outweigh the costs with a net benefit of £2.8m in the first five years of the order. This is largely driven by an increase in the probability of women exiting prostitution due to the order and the expert advice and support.

Further details of the cost-benefit analysis can be found in Appendix A.

#### **Impact Assessments**

##### **Health impact assessment**

As set out above, the health impact of involvement in prostitution can be extensive and long-term. It includes the misuse of Class A drugs, and associated health problems, as well as the health issues that accrue from lack of attention to healthcare over a protracted period, repeated sexual activity, homelessness and poverty.

A range of STIs and other sexual health problems are attributed to unprotected sex and the sharing of needles. Due to increasing drug use, street prostitution is becoming more and more chaotic and competitive which could have a significant impact on public health.

##### **Equality Impact Assessment**

A separate Equality Impact Assessment has been undertaken for this provision. It concludes that the new order is not likely to impact disproportionately on a particular equality target group.

##### **Rural issues**

The impact of street prostitution tends to be less damaging in rural areas. The new order would therefore have minimal impact in terms of rural issues.

##### **Small Firms Impact Test**

A survey of small businesses, and focus groups in which local businesses were involved, suggested minimal impact.

##### **Competition assessment**

The change would be unlikely to have any affect on competition.

##### **Enforcement, sanctions and monitoring**

The Crime and Disorder Act 1998, as amended by the Police Reform Act 2002, places a duty on specific agencies to work together to tackle crime and disorder and the misuse of drugs in their local areas. Working in partnership the responsible authorities have been required to undertake a triennial audit to identify the extent of the problems within their community, and to develop

strategies that deal effectively with them. Such strategies generally address the needs of the community through the enforcement of the civil and criminal law to reduce the anti-social behaviour and the criminality associated with prostitution, and through the provision of support services for those individuals involved in street prostitution.

The new order will be available for those who persistently loiter or solicit for the purposes of prostitution. Failure to comply with the requirements of the order will result in a return to court for re-sentencing.

#### **Implementation and delivery plan**

The implementation and delivery plan will involve the dissemination of good practice advice and guidance on the new order (through circulars to the police and the courts) and will be a component of the wider policy on policing prostitution and developing routes out for those involved in prostitution.

#### **Post-implementation review**

Implementation will be monitored and measures of success will be developed in order to review the effectiveness of the order, and to develop and share promising practice.

#### **Summary and recommendation**

In summary, the serious issues associated with street prostitution, and the reluctance to address prostitution in some areas, necessitates a change in the approach to loitering or soliciting for prostitution. The introduction of the new order will provide appropriate help and support for those involved in prostitution and reduce the burden on the courts of repeated hearings for the offence.

#### **Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

Gerry Sutcliffe, Parliamentary Under Secretary of State for the Ministry of Justice, 20 June 2007

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## **Increasing penalties for deliberate and wilful misuse of personal data**

### **Full Regulatory Impact Assessment**

#### **1. Title of proposal**

**New custodial sanctions for breach of section 55 of the Data Protection Act 1998 (DPA).**

#### **2. Purpose and intended effect**

- **Objective**

To deter more effectively the wilful misuse of personal data by adding to the current financial sanctions a more severe but proportionate custodial sentence. This will help increase public confidence in the sharing of personal data in the interests of legitimate activity including efficient government.

- **Background**

The DPA currently only allows for a fine for the misuse of personal data rather than a more serious sanction.

It is an offence to knowingly or recklessly, without the consent of the data controller:

- **disclose personal data**; (covering, for example, officials passing information to private detectives).
- **obtain personal data**; (covering, for example private detectives obtaining information from officials).
- **procure the disclosure of personal information to another person** (covering, for example a private detective paying an official to disclose information to a journalist).

- **Rationale for government intervention**

The Information Commissioner's Special Report to Parliament, published on the 11 May, highlighted the extent of the illegal trade in personal information and the corrosive effects that this has on society. It recommends custodial sentences for offences relating to misuse of personal data. The government agrees with the Information Commissioners' Office that the current financial penalties available to the court do not act as a sufficient deterrent to those engaged in the illegal trade in personal information.

A number of pieces of legislation already allow for custodial sanctions for the misuse of personal information. Most recently, the ID Cards Act 2006 will allow for a custodial penalty of up to two years if information from the National Identity Register is disclosed. Similar provisions are found in other pieces of legislation, which involve the use and storage of personal information by public authorities. Amending the DPA will ensure that all cases involving the wilful misuse of personal data will be subject to comparable penalties.

There is growing public concern about the misuse of personal data. Recent cases such as the HMRC tax credit fraud and the release of personal data by the DVLA to car parking firms have highlighted the level of public concern and media exposure that personal information issues generate. Amending the DPA to allow for the option of a custodial sanction will provide public reassurance that the government is serious about protecting people from crime and upholding the individual's right to an appropriate degree of privacy.

### **3. Options**

#### **Option 1**

Do nothing – leave the sanctions available to the court as they are at present.

#### **Option 2**

Increase the sanctions available to the court to allow for up to 12 months imprisonment, on summary conviction, and up to 2 years on indictment.

The government does not believe that it is appropriate to do nothing. It is important that there is consistency across all pieces of legislation, which deal with offences of this nature. The current trend to move to custodial sanctions, as highlighted by the Identity Cards Act 2006 and the Commissioner for Revenue and Customs Act 2005 make it important that the Data Protection Act is amended to allow for comparable sanctions. Furthermore, it is clear that the current financial sanctions are not, on their own, a sufficient deterrent to those engaged in the trade in personal information.

### **4. Costs and Benefits**

#### **• Benefits**

#### **Option 1**

Do nothing – there are no benefits to following this approach.

#### **Option 2**

There are two principal benefits to following this approach. Firstly, parity of approach. It is important that all offences of misusing personal data are punishable to the same high standards. This proposal will bring the Data Protection Act up to the same standard as the most recent legislation dealing with similar type offences. Secondly, deterrence. It is clear from the ICO's special report that the current financial penalties are not a sufficient deterrent. A custodial penalty will act as a stronger deterrent to individuals.

#### **• Costs**

#### **Option 1**

There would be no associated costs with this option

#### **Option 2**

There would be a slight increase in costs with this option on two areas – the Criminal Legal Aid budget and expenditure on courts, prisons and offender management.

**(a) Legal Aid costs**

The possibility of a custodial sentence will increase the likelihood of a defendant receiving criminal legal aid. It is accepted that those cases serious enough to be prosecuted in the Crown Court will be eligible automatically for legal aid. However, there have only been four DPA cases in the Crown Court in the last four years.

In considering legal aid for cases in the Magistrates' courts, it is important to note that data protection offences are in many cases 'white collar' crimes. Defendants are therefore likely to be more affluent than the average magistrates' court defendant. Consequently they are more likely than the average defendant to fail the means test and be ineligible for legal aid. On this basis, our main assumption is that 50% of those cases prosecuted in the magistrates' courts will qualify for legal aid if these proposed new sentencing powers are introduced. However, for modelling purposes we will also include 'worst case' costs in which all magistrates' courts cases qualify for legal aid.

Based on the evidence from the ICO's report on prosecution numbers over the last 4 years, we can assume for costing purposes that there are an average of four magistrates' courts DPA cases per year and one Crown Court DPA case per year. Discussions with the Information Commissioner's Office have indicated that this is a fair assumption to make. The government does not consider that the creation of a new custodial sanction will increase the number of prosecutions brought forward by the prosecuting authorities, as it is only the range of available sanctions that will expand. The nature of the offences themselves will be unaffected.

If we take the 'best case' (in terms of impact on legal aid expenditure) to be that the numbers of cases remain at this level, and the 'worst case' to be that they increase by 100%, it is possible to project the extra burden on the Legal Aid budget.

The following table shows, for the scenarios outlined above:

(a) the cost that would have been incurred by the legal aid budget over the last four years had these proposals been in place, and projected costs for future years

year	Volume	costs			
		100% receive legal aid		50% receive legal aid	
		min (£)	max (£)	Min (£)	max (£)
2002	2 x magistrates' courts 1 x Crown Court	£2,800	£16,000	£2,600	£15,400
2003	7 x magistrates' courts 1 x Crown Court	£5,700	£18,300	£3,300	£16,400
2004	8 x magistrates' courts	£4,000	£4,000	£4,000	£4,000
2005	6 x magistrates' courts 1 x Crown Court	£6,500	£38,000	£5,000	£31,00
projected current rates	4 x magistrates' courts 1 x Crown Court	£4,000	£17,000	£3,000	£16,000
projected 100% increase	8 x magistrates' courts 2 x Crown Court	£7,500	£34,000	£5,500	£32,000

On the basis of the assumptions made, the range of costs which would fall to DCA via extra burden on the legal aid budget would be between £3,000 and £17,000. If prosecution rates increase by 100% the extra burden on the legal aid budget would be between £34,000 and £5,500. The government does not however consider that the creation of a new custodial sanction will increase the number of prosecutions brought forward by the prosecuting authorities.

**(b) expenditure on prisons and offender management**

In considering the impact on expenditure on prisons and offender management the government considers that only a small minority of offences will be sufficiently serious to warrant custodial sentences, suspended custodial sentences or community orders. The government is clear that prison should be reserved for serious, violent and dangerous offenders. It is expected that the majority of successful DPA criminal prosecutions will continue to be disposed of with lesser sentences, as now.

For other offenders the courts have available a range of tough non-custodial sentences such as fines and community sentences. In addition to fines and custodial sentences courts will be able to sentence offenders to community sentences. A court may impose a community sentence on any offender who has been convicted of a criminal offence, where it judges that the offence is serious enough to warrant such a sentence.

Community sentences combine punishment with changing offenders’ behaviour and making amends. It can also encourage the offender to deal with any problems that might be making them commit crime. Community orders can include up to twelve different requirements, including unpaid work and curfews.

Recognising the expectation that custodial sentences will only be used relatively rarely and for the most serious DPA offences, we are assuming for modelling purposes that 1 defendant (from the projected 5 prosecutions) will receive a custodial penalty per year. The resulting costs will depend on the length of the sentence handed down. In order to reflect the full possible range, the following table illustrates the costs at minimum and maximum sentencing powers in the Magistrates courts.

<b>Minimum</b>	<b>Custody</b>	Capital costs		£4,200
Minimum sentence is 2 weeks custody		Annual costs		£1,300
	<b>Total (inc. capital)</b>			<b>£5,500</b>
<hr/>				
<b>Maximum</b>	<b>Custody</b>	Capital costs		£27,000
Maximum sentence is 13 weeks custody		Annual costs		£8,800
	<b>Total (inc. capital)</b>			<b>£35,800</b>

**Overall potential cost increase**

Taking all factors into account it is possible to reach an aggregated potential annual extra burden. Based on best and worst case scenarios the Legal Aid budget may increase by between £3,000 and £34,000. The best and worst case scenarios for prison and offender management expenditure lie between £5,500 and £35,800. If a

single person were to receive a minimum sentence the aggregated total cost (legal aid plus custodial costs) in a best case scenario would be £8,500. If a single person were to receive a maximum sentence in a worst case scenario the aggregated total cost would be £67,800. The potential future cost therefore lies between £4,000 (Legal Aid expenditure only and no custodial sentence) and £67,800 (maximum Legal Aid and maximum prison expenditure).

### **Administrative Burdens and Simplification**

The Government's proposed action to extend the DPA and allow custodial offences does not affect any business that is complying with the requirements of the DPA.

## **5. Consultation**

The Partial RIA accompanied a full public consultation paper *'Increasing penalties for deliberate and wilful misuse of personal data.'*

In total the Government received 63 responses to the consultation from Government departments, private companies, local authorities, independent regulators and members of the public. The majority of responses (to question 1) 95%, were supportive of the Government's proposal to introduce custodial penalties to section 60 DPA to enable the court to have these penalties available when sentencing those found guilty of the wilful misuse of personal data.

The remainder 5%, were concerned about a range of issues; including the adequacy of current penalties, the right to freedom of speech under Article 8 of the European Convention of Human rights, the suitability of the DPA for the introduction of custodial penalties, and the number of prosecutions under the DPA. These are covered in detail in the response paper.

Two comments were received about the RIA. The stakeholders commented on the RIA's assessment of the benefits to the proposal, and how any increase in the number of prosecutions would be offset by a corresponding decline in prosecutions under other legislation.

## **6. Race Equality Impact Assessment**

These proposals will not have any effect on race equality.

## **7. Judicial Impact Assessment**

There will be minimal impact on the judiciary in the form of training and awareness for the new custodial sanctions. It is not anticipated that there will be any rise in the number of prosecutions and consequent extra demand on judicial resources.

## **8. Small firms impact test**

The small business services were consulted. There will be no additional impact on small firms. The proposals will not make any further demands on businesses than are currently imposed by the Data Protection Act 1998.

## **9. Competition Assessment**

There will not be any greater impact on any particular business sector. The proposals will not make any further demands on businesses than are currently imposed by the Data Protection Act 1998.

## **10. Enforcement, sanctions and monitoring**

The enforcement and sanctions are to be delivered and regulated by the Information Commissioner. The CPS can also prosecute these offences. There are no changes to the way the Act is enforced, as the amendment will not create any new offences.

### **11. Implementation and delivery plan**

The Government will seek to introduce legislation as soon as parliamentary time allows.

### **12. Post-Implementation Review**

We will keep the operation of the custodial sanctions under review, and monitor their efficacy as a deterrent.

### **13. Summary and Recommendation**

The Government is proposing to amend the DPA to include custodial sanctions for offences committed in relation to misuse of personal data. For the reasons set out above and in the consultation paper, the Government believe that Option 2, to make changes to the penalties for offences committed under section 55 of the DPA, represents a fair and balanced approach to these issues.

### **14. Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

**Baroness Ashton, Parliamentary Under-Secretary of State, Department for Constitutional Affairs. 5 March 2007**

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## **REGULATORY IMPACT ASSESSMENT**

### **CLOSURE ORDERS: PREMISES ASSOCIATED WITH SIGNIFICANT AND PERSISTENT DISORDER OR SERIOUS NUISANCE**

#### **1. THE PROPOSAL**

Following consultation, the Government is introducing new legislation for a premises closure order in England and Wales to close and seal, for a set period, a property at associated with significant and persistent disorder and serious nuisance, regardless of tenure.

The consultation on this proposal, which ran from November 2006 to February 2007, was accompanied by a detailed partial regulatory impact assessment<sup>11</sup>. This document does not rehearse all those arguments but seeks to fill in some of the gaps and build on the findings from the consultation responses.

#### **2. PURPOSE AND INTENDED EFFECT**

##### Objective

This new measure will provide the police and the local authority with an additional tool with which to tackle properties at the centre of significant and persistent anti-social behaviour. It provides an opportunity to act swiftly and decisively to control nuisance behaviour and offer some respite to suffering neighbours. It also provides an opportunity through which to engage the perpetrator(s) in support and rehabilitation which they may have refused until that point.

##### Background

Anti-social behaviour is the most visible sign of disrespect and is a major social justice issue. Almost one in three people living on a low income, in social housing or inner city estates perceive their area as suffering from high levels of anti-social behaviour compared with one in 14 people perceiving this to be the case in wealthier areas.<sup>12</sup>

Since the launch of the anti-social behaviour strategy in 2003 there has been considerable success and agencies have been encouraged to remove barriers and take action. Perception of high levels of anti-social behaviour has fallen significantly from its peak of 21% in 2002/03 and is now stable at 18% in 2006.

The **Respect Action Plan**<sup>13</sup>, published in January 2006, outlines how we intend to build on that success by going broader, deeper and further to tackle anti-social behaviour and address its causes.

Between November 2006 and February 2007, the Home Office consulted on a proposal for a premises closure order designed to bring relief to those suffering from the presence of anti-social premises by enabling the temporary closure of any premises, regardless of tenure, which is at the centre of significant and persistent anti-social behaviour.

The proposal builds on the successful operation of the current crack house closure powers in England and Wales and the closure of premises tool available in Scotland.

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<sup>11</sup> "Strengthening powers to tackle anti-social behaviour: Consultation Paper", Home Office, November 2006.

<sup>12</sup> "Perceptions and Experience of anti-social behaviour: findings from the 2004-2005 British Crime Survey". Anna Upson. OLR 21/06, October 2006.

<sup>13</sup> *Respect Action Plan*, Respect Task Force, January 2006.

### Rationale for Government intervention

Government has already introduced a number of positive interventions to tackle the problems associated with anti-social behaviour. Practitioners have told us that their use of the anti-social behaviour interventions has actually acted as an effective deterrent in many areas. We also know that it is critical to focus action on those who consider themselves “untouchable” and that by dealing with some of the most difficult cases or problems we can bring about a change in culture and show that action can be taken and that problems can be solved.<sup>14</sup>

Current specific closure powers are aimed at tackling properties where class A drugs are supplied and used; where premises are causing a public noise nuisance; and where a public nuisance is being caused by noise coming from the premises or where there is, or is likely to be, disorder in the vicinity of and related to the premises.

Practitioners tell us that these interventions are working well to safeguard and protect the local community and encourage perpetrators to accept offers of support. Powers have been used over 700 times between January 2004 and September 2006<sup>15</sup> to close down crack houses.

Local authorities can also designate neighbourhoods as selective licensing areas. The Housing Act 2004 provides powers to deal with properties and private landlords through Special Interim Management Orders which enable the local authority to take over the management of individual properties where there is a significant anti-social behaviour problem which the landlord or manager is failing to tackle.

Licensing powers under the Licensing Act 2003 are also available and enable the police to close licensed premises instantly for up to 24 hours where a public nuisance is being caused. The licensing authority also has powers for a review of a licence.

However, we know that anti-social behaviour is not always restricted to nuisance associated with drugs or alcohol and can be a problem across the spectrum of social housing, private landlord properties and owner-occupiers. Respondents to the consultation have confirmed that severe nuisance and anti-social behaviour centred in or around a property is much broader in its reach and impact.

The large majority (86%) of the responses to the consultation question, which included local authority, police and social landlord practitioners, agreed that the premises closure would be a useful new tool in tackling the broader anti-social behaviour associated with a premises, such as excessive noise and rowdy behaviour with frequent drunken parties or high numbers of people entering and leaving a premises at all times of the day or night or anti-social residents intimidating and threatening their neighbours and criminal families running illegal business from their properties. This is covered in more detail in the Government response paper published in May 2007.<sup>16</sup>

This confirmed that there is a need to ensure a wider range of anti-social behaviour centred in and around any kind of property or premises can be tackled and that the

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<sup>14</sup> “The Respect Handbook: a guide for local services” <http://www.respect.gov.uk/members/article.aspx?id=9764>

<sup>15</sup> “Tools and Powers to Tackle Anti-Social Behaviour: January 2007”  
<http://www.respect.gov.uk/members/article.aspx?id=9822&terms=tools+and+powers+to+tackle+anti+social+behaviour&searchtype=2&fragment=False>

<sup>16</sup> Responses can be found at <http://www.homeoffice.gov.uk/documents/cons-asb-powers/response-asb-powers?view=Binary>



intervention should apply equally to owner occupiers and tenants. Respondents to the consultation stated that this will fill an existing gap and ensure a consistent response. This is based on an approach already taken in Scotland under the Antisocial Behaviour (Scotland) Act 2004.

### **3. CONSULTATION**

This proposal has been the subject of full consultation within Government and more broadly with practitioners, non-Government organisations and in the public both in the run up to and following the publication of the Respect Action Plan in January 2006.

#### Public and stakeholder consultation

This proposal has been the subject of external consultation and wide media debate. There was strong support from respondents to the consultation with 86% of respondent agreeing that it would be a useful tool. The majority of respondents further agreed that it should be a tool of last resort after earlier interventions had been tried (91%) and that the property should be closed and sealed for up to 12 weeks with the option of applying to the courts for a further 12 week extension if necessary (89%). They also felt that it would be an effective means of addressing issues across the broad spectrum of tenures.

It was very clear from the consultation responses that practitioners felt that the premises closure tool should also be available to the local authority, as well as the police. This included responses from the Local Government Association, Birmingham City Council, East Thames Housing, North East ASB Study Group (Northern Housing Consortium), Sheffield Homes (Sheffield City Council), Manchester City Council and the Police Federation of England and Wales.

In response to this and in recognition of their neighbourhood management and community safety responsibilities, we will extend the power to the local authority, thereby providing them with an additional tool with which to tackle anti-social behaviour. This follows the precedent already set in their application for and use of ASBOs and injunctions. Practically, this means that consultation between the police and local authority will be essential but applications could be taken forward by either one of those agencies.

Respondents stressed the importance of safeguards to ensure the welfare of children and vulnerable adults in the household and that support and rehabilitation should be offered alongside the enforcement activity. These will form an important part of the guidance for operating the new power.

#### Within Government

The proposal has been discussed, considered and agreed across Government. A range of Government departments also considered the responses to the consultation paper.

### **4. OPTIONS**

#### Option one: Do nothing

We could continue to use the existing powers under the Anti-social Behaviour Act 2003, the Licensing Act 2003 and the Housing Act 2004.

But, as we have explained, we believe there is a strong rationale for further Government intervention to plug the gap so as to be able to deal with a wider array of anti-social behaviour activity across the spectrum of owner-occupier, private rented and social housing. Furthermore, discussions with key practitioners and responses

to the consultation have suggested that the new power would be a positive addition and would be welcomed by them and by the public. We therefore do not believe that doing nothing is an appropriate response to those concerns.

#### Option two: Legislate for a new power

As outlined above and detailed further in the Government response to the consultation, we believe there is a clear need for a new power to plug the existing gap and we have been provided with a clear mandate for pressing ahead in this way. This view was supported in the responses to the consultation exercise.

## **5. COSTS AND BENEFITS**

The introduction of a new premises closure order will impact on various groups including the perpetrator(s), the surrounding neighbourhood and local public agencies.

#### Social costs and benefits

The closure order will provide a means through which to safeguard and protect the local community and also further encourage people to accept offers of support. We believe that the use of the power will send a positive signal that anti-social behaviour will be tackled and not tolerated across all housing and property tenures and that the protection of the wider community is paramount.

#### Neighbourhoods and communities

Where people live is central to their perceptions of anti-social behaviour. We know that there can be a huge emotional impact on those suffering at the hands of nuisance neighbours and it is difficult to underestimate the anguish they feel when they don't feel safe or secure in their own homes. Analysis of perception and experiences highlights the emotional distress caused by living near nuisance neighbours. 96% of those suffering from noisy neighbours reported a range of emotional reactions including annoyance, frustration, anger and worry but a third (32%) reported more serious emotional impacts such as: shock, fear, stress, depression, anxiety or panic attacks and crying. Over a quarter even considered moving away from the area.<sup>17</sup>

And the British Crime Survey (BCS) also shows that it is people living within low income areas and "council estates" who perceive the highest levels of anti-social behaviour.

Therefore the greatest impact of the premises closure order will be felt by the suffering neighbours, the nearby residents and the wider communities, all of whom will be provided with some respite from persistent nuisance.

The majority of the closure orders issued in Scotland have been issued on residential properties.<sup>18</sup> The experience in Scotland has proved that closures are particularly effective and are very popular with local communities. Local residents have said:

*"We haven't been on holiday for the past two years as we're scared to leave the house. Last weekend was bliss, the first peaceful weekend we've had in two years"*

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<sup>17</sup> "Perceptions and Experience of anti-social behaviour: findings from the 2004-2005 British Crime Survey". Anna Upson. OLR 21/06, October 2006.

<sup>18</sup> The Scottish Executive report that between October 2004 and September 2006 there have been 21 closures in Scotland: 12 were Local Authority properties; 2 were private landlord properties; 4 were owner occupiers; and 1 was a business premises. 2 are unknown.

*“Now they’ve gone things have got better already. This weekend was the most peaceful one we’ve had for months.”*

*“The action the police have taken today is a huge relief for us. We’re praying for some peace now.”*

After the successful application of a closure order in Fife, Superintendent Tony Fitzpatrick, said: *“The closure order means that people who have had to put up with an intolerable situation will be able to get some peace and quiet.”*

### Perpetrators

A small minority of people are responsible for a disproportionate amount of anti-social behaviour. The recent National Audit Office value for money report on anti-social published in December 2006 showed that early interventions are very successful: in their sample, 9 out of 10 people desisted from further anti-social behaviour after up to three interventions.<sup>19</sup> But there is still a small hard-core of persistent and prolific perpetrators who are causing disproportionate amounts of nuisance, some of which will be centred around the use of a property.

The premises closure order will be used after earlier interventions have been tried and will provide a further opportunity to engage perpetrators and encourage and cajole them to accept offers of support.

Clear and sensitive distinctions will need to be made in relation to those who are being targeted as part of the order. On the one hand there will be a small hard-core and criminal element which needs to have their safe haven removed from use. But, we appreciate that on the other hand there may be vulnerable cases, including children. Their safety must not be comprised and the decision to pursue the closure as an option needs to remain sensitive to both these cases and measures should be put in place to safeguard them and promote their welfare if the closure goes ahead.

In these kinds of cases those children and vulnerable adults will already be at risk from what is happening at that property. The closure brings this to an end which in itself therefore improves that child or vulnerable adult’s well-being. Where a vulnerable person has been preyed upon and has been unable to exercise control over their property then this should be part of a planned re-settlement move.

Existing ‘crack house’ powers are currently being used alongside support measures. This same approach will be promoted for the premises closure so that the order provides the opportunity for the local agencies to co-ordinate and offer a level of support which those subject to the closure may have previously rejected. The closure therefore should never be used in isolation but rather as part of a more strategic and holistic response aimed at tackling the underlying causes of the anti-social behaviour. It provides the opportunity with which to encourage, cajole and coerce people to accept those offers of support.

It is essential that support is matched to enforcement action if we are to put an end to the significant and persistent nuisance behaviour rather than simply shifting it on and placing the burden elsewhere, an issue raised by respondents to the consultation. It is also an approach being taken forward by the national network of family intervention projects launched by the Respect Task Force in April 2006. Practitioners in Scotland report that their use of closure orders has led to a change in behaviour.

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<sup>19</sup> National Audit Office Value for Money report *“The Home Office: Tackling Anti-Social Behaviour”*, December 2006

### **Race equality assessment**

See separate Equality Impact Assessment.

### **Health impact assessment**

Evidence collected by the Respect Task Force with victims and witnesses shows that victims and witnesses of anti-social behaviour and neighbour nuisance report not being able to sleep at times, with a sizeable number having to phone in sick and take time off work. A significant minority have gone to their GP as a result of anti-social behaviour and some have been put on treatment or medication. Victims also attest to the impact of anti-social behaviour on the health of their children. We believe that where closures become necessary they will have a positive impact on the health of both the victims and the perpetrators.

Those requiring high levels of interventions are also suffering and are already known to the health services. Evaluation of six family intervention projects found that adults were suffering from poor mental or physical health and that the children who were caught up in these households also had a high incidence of behavioural problems.<sup>20</sup> The closure can bring that to an end and provide the mechanism for appropriate support interventions.

### **Impact on disabled people**

Impacts are unlikely to be significant. Safeguards will ensure that any vulnerability issues are considered when taking the decision to pursue a closure order.

### **Rural proofing**

We have considered the rural impacts and are satisfied the proposals do not have any particular rural impacts.

### **Impact on charities and voluntary bodies**

In their responses to the consultation, non-Government organisations and charities did not state that there would be any additional burden on them. Their main concern was that the safeguard of children and vulnerable adults, which will be an important feature of any closure process. As outlined above, the closure can act as a means of protecting children and vulnerable adults who are being harmed by being caught up in an extremely anti-social household.

### **Economic costs and benefits**

Anti-social behaviour is costly for individuals, families, communities, businesses, local public services and central Government<sup>21</sup>

Based on its “one day count” in September 2003, the Home Office estimate that the cost to Government agencies of dealing with reports of anti-social behaviour is £3.4 billion a year. The costs for responding to incidents which could in part be centred around a premises were estimated to be as follows:

	Reports per day	Estimated cost to agencies per day	Estimated cost to agencies per year
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<sup>20</sup>Communities and Local Government (2006). “*Anti-social behaviour intensive family support projects: an evaluation of six pioneering projects for families at risk of losing their homes as a result of anti-social behaviour*”. *Housing Research Summary*, 230.

<sup>21</sup> Whitehead C et al “*Economic and Social Costs of Anti-social Behaviour: A Review*”, London School of Economics, 2003.

		(000s)	
Litter/rubbish	10686	£1,899	£466m
Criminal damage/vandalism	7855	£2,667	£667m
Vehicle-related nuisance	7782	£1,361	£340m
Nuisance behaviour	7660	£1,420	£355m
Intimidation/harassment	5415	£1,983	£496m
Noise	5374	£994	£249m
Rowdy behaviour	5339	£995	£249m
Prostitution, kerb crawling, sexual acts	1011	£167	£42m

Once the costs borne by others are included this estimate rises significantly. For example, the cost to victims of criminal damage alone is estimated to be £1.2 billion.<sup>22</sup>

And there are further indirect costs and impacts on local businesses, disruption to public transport, local house prices or insurance premiums.

There is also an emotional cost and these estimates do not include any of the social costs of anti-social behaviour suffered by victims and witnesses, which often go unreported. It is therefore likely that this under-reporting also leads to an under-estimation of the overall costs.

The National Audit Office value for money report stated that:

*“Significant monetary and emotional savings could therefore be made if anti-social behaviour were reduced.”*<sup>23</sup>

The study states that effective intervention can help avoid costs for dealing with reports of anti-social behaviour and as highlighted above, that the majority of people in their sample desisted from anti-social behaviour after up to three interventions, suggesting that there will be greater economic and social cost benefits to society.

For example, 33% of people in National Audit Office sample who received only one intervention were involved in nuisance behaviour at an approximate total cost to the authorities of £185 per incident. The majority of these received a warning letter at a cost of £66 and did not re-engage in any further anti-social behaviour.

Research from the US estimates that overall savings by diverting an individual from a life of anti-social behaviour and crime range from 1.7 to 2.3 million dollars (approx £0.9 to £1.2m)<sup>24</sup>.

The cost to public agencies of responding to reports of anti-social is £3.4 billion pounds a year<sup>25</sup> while the estimated costs to the taxpayer of a family with severe

<sup>22</sup> Home Office “*The Economic and Social Costs of Crime against individuals and households, 2003-4*”

<sup>23</sup> National Audit Office Value for Money report “*The Home Office: Tackling Anti-Social Behaviour*”, December 2006

<sup>24</sup> Scott, S. Knapp, M. Henderson, J. Maughan, B. (2001): “*Financial costs of social exclusion: follow up study of anti-social children in to adulthood*”, British Medical Journal 323: 191-194

<sup>25</sup> Whitehead C et al “*Economic and Social Costs of Anti-social Behaviour: A Review*”, London School of Economics, 2003.

problems could be £250,000 - £350,000 in a single year for a range of interventions by public services<sup>26</sup>.

Agencies have a duty to respond to this. Anti-social behaviour has been identified as both a cause and effect of areas declining to the point where they require regeneration.<sup>27</sup> It is also recognised that the process of regeneration and the physical disruption it causes can be stressful and creates further opportunities for anti-social behaviour.<sup>28</sup> Therefore, failing to tackle anti-social behaviour effectively means that there are likely to be serious consequences which can lead to a spiral of decline, and potentially greater costs.

The provision of a new robust and effective new tool aimed at tackling anti-social behaviour centred on a premises, whilst also providing a means with which to ensure support and rehabilitation, should mean that long-term savings can be made.

### **Community safety partners**

At the time of the publication of the partial regulatory impact assessment which accompanied the consultation in November 2006 we estimated that there might be around 50 applications for closures a year in addition to the existing crack house closures. The consultation and follow-up discussions with respondents have shown that the power is welcomed and will plug an existing gap and applications for the closure may be a little higher than expected. We do not believe that by empowering local authorities to use and apply for the closure order that there will be a significant rise in the number of closures as there are only a finite number of properties for which this will be necessary and always part of a multi-agency approach which will include the police, local authority and other relevant services.

As with all anti-social behaviour interventions, it is the decision of the local practitioners and agencies to choose which tool will be the most appropriate and effective in tackling the specific problem and no targets are set centrally. However, based on further discussions with local areas and extrapolation based on analysis of the frequency of the existing use of tools and powers in a tiered approach we estimate that the figure will be around 100 closures a year. We will monitor their use on a quarterly basis as part of our review of crime and disorder partnerships' use of tools and powers.

The closure tool is a power rather than a duty and it is for the police and local authority to take local decisions to assess whether it is an appropriate course of action once other interventions have been tried. As part of this assessment they will consider the cost implications and cost benefits involved.

The cost to the police of pursuing the existing crack house closures varies from force to force but information from practitioners suggests it is in the region of £500 - £2,700, depending on the circumstances of the case. This covers the time taken to carry out the visit/raid on the property to issue the closure notice, preparing for and presenting the court case and then enforcing and maintaining the closure. We can expect that costs for the premises closure will be in the same region. Assuming a maximum of 100 closures a year, we estimate the total cost to be £270,000 which will be split between the police and local authority.

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<sup>26</sup> Nixon, J., Hunter, C., and Parr, S. (2006) "*Anti-social Behaviour Intensive Family Support Projects: An evaluation of six pioneering projects*". Department for Communities and Local Government.

<sup>27</sup> Views of NDCs, Focus Group Reports, February 2005

<sup>28</sup> Home Office 2006 "*Tackling vandalism and other criminal damage*"

There may be some additional costs for local housing authorities under the homelessness legislation, in some of those cases where people are made homeless as a result of the closure. However, the occupiers of any property which is subject to a closure will have already received earlier interventions and the consequences of their behaviour will have been made very clear to them. Therefore, it is anticipated that most people who become homeless as a result of premises closure are likely to be found by the local authority to have become homeless intentionally as a consequence of their significant and persistent anti-social behaviour. The estimated net cost to a local authority per household application for housing assistance where the applicant is found to be in "priority need" but intentionally homeless is around £2,300 per year. Based on the experience in Scotland and the way we expect the closure to operate we estimate that this will only be relevant in around half of the cases.

We accept that there will be operational costs involved but we believe that these will be off-set by the considerable savings to be made by introducing the new power.

We know that agencies are already spending £3.4 billion a year in responding to reports of anti-social behaviour. The one day count showed that the local authority received the majority of complaints (over a third)<sup>29</sup> and so therefore, it is reasonable to suggest that a significant proportion of the annual cost, and therefore the potential savings, fall to them. As the National Audit Office report states, when action is taken to tackle anti-social behaviour then significant monetary and emotional savings can then be made.

Without the closure order, the property will continue to cause problems, the agencies will continue with attempts to address the problems and their interventions will escalate and costs would continue to accrue.

As complaints continued to be made by neighbours, agencies would be still be under a duty to continue to respond. The LSE report on the economic and social costs of anti-social behaviour estimates that reporting and responding to each complaint of anti-social behaviour can be up to £400 each.<sup>30</sup>

During the course of the one day count, over 66,000 reports of anti-social behaviour were reported to local agencies, more than 1 report every 2 seconds. The cost of responding to those reports was £13,500 for that one day alone.

There would continue to be housing management costs such as repairs and maintenance on the property. This is estimated by practitioners to be in the region of £150 per visit. Housing manager and anti-social behaviour practitioner staffing costs would continue to accrue; the LSE report estimates the staff time for dealing with a neighbourhood dispute is around £1,000.<sup>31</sup>

We know that these are chaotic households and demand a response from a whole host of local agencies. There would be continued demands on other local agency funds. For example, practitioners advise us that call-outs to the fire brigade can be a fairly regular occurrence for some extremely anti-social households. The estimated

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<sup>29</sup> "One Day Count", Home Office Anti-social Behaviour Unit, 10 September 2003. The local authority received 35.1% of complaints about anti-social behaviour on that date, followed by the police who received 27%.

<sup>30</sup> Whitehead C et al *"Economic and Social Costs of Anti-social Behaviour: A Review"*, London School of Economics, 2003.

<sup>31</sup> Ibid

cost for each response to a fire or false alarm on a domestic property is around £3,200.<sup>32</sup>

Further action would need to be taken, for example breaches of the earlier interventions would be followed up. The cost of a prosecution for the breach of an anti-social behaviour order is on average £1,500. And without the closure, some social landlords may be forced to pursue eviction or possession action at a greater cost and a lengthier proceeding. The cost of evicting an anti-social tenant is between £6,500 and £9,500.

Where eviction or possession action is not open to those who own their properties agencies are forced to wait until the activity escalates and becomes so extreme meaning that more expensive criminal sanctions can then be pursued. The LSE report estimated the cost of a common assault offence to be around £500<sup>33</sup> and the estimated benefits from preventing one burglary to be around £2,300 and for preventing a robbery or mugging to be around £5,000 (these costs include stolen and damaged property, the emotional and physical impact on victims and the criminal justice system).

Where families are involved further action and costs may well be pursued to ensure their well-being and provide protection for any children.

The closure will also provide the catalyst through which agencies can address the underlying anti-social behaviour, thus preventing the need for further and more costly interventions. The experience of the closure procedure in Scotland has also proved that it, like other anti-social behaviour interventions, has acted as an effective deterrent: in the build up to a closure of a domestic property Tayside police had responded to 79 complaints over a three month period. During the closure period this substantially tapered off and since the order expired police action has not been required at all, therefore proving that the order has a deterrent effect beyond the life of the closure itself.

As per the existing crack house closures, the police and local authority will be able to apply to the court detailing any expenses and the court may consider and approve an order of costs against the owner of the property for any expenses occurred by the police or local authority in enforcing the closure.

We are committed to monitoring the use of the new closure power, including the costs and benefits. Training will be provided for practitioners through Respect academy events and action days and the Respect website and ActionLine. This is the approach adopted for ensuring the appropriate usage of all anti-social behaviour tools and powers.

In summary - based on an estimated 100 closures per annum the costs to local agencies (police and local authority) for using the tool will be around £385,000 (including potential homelessness duty costs). However, practitioners advise that by using the closure proportionately and effectively to tackle the significant and persistent nuisance centred around these properties, that considerable longer-term

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<sup>32</sup> "The economic cost of fire: estimates for 2003", ODPM

<sup>33</sup> Whitehead C et al "Economic and Social Costs of Anti-social Behaviour: A Review", London School of Economics, 2003.



savings will be made. The Government will fund any costs in excess of savings, following a review of activity levels on implementation.

### **Private landlords**

Although indications are that the majority of the current crack house closures are on LA/RSL properties and over half of the closures in Scotland have been on local authority properties, it is acknowledged that anti-social behaviour is not just a problem which affects social housing but is also evident in the private rented and owner occupier sector.

Responses to the consultation confirmed that the closure order will fill an existing gap whereby irresponsible private landlords do not take action to curb their anti-social tenants' behaviour. It may also help any weak and ineffective private landlords to regain control of their properties.

We would not envisage a situation where a closure order would be served without all reasonable attempts having been made to engage the landlord and/or managing agent in implementing alternative approaches. The premises closure order will only be aimed at closing down the properties of irresponsible landlords who have repeatedly failed or refused to engage with local agencies. Tenants and owner occupiers will continue to retain their rights and obligations throughout the closure period.

### **Courts**

We know from discussions with court staff and practitioners that the current crack house closure orders require only short court hearings (20 minutes to a few hours). There is a similar picture in Scotland. The estimated cost to the courts for 100 cases per annum is around £49,000 which includes the cost for the original case and an estimate for further hearings for extension/discharge and appeals to Crown Court. There will also be some additional legal aid costs, estimated to be around £290,000 per year.

The Government has agreed to provide the additional downstream costs to the courts which are in excess of any longer-term savings made by a reduction in dealing with related offences.

### **Local businesses**

The Anti-social Behaviour Act 2003 and the Licensing Act 2003 provide tools to close premises where there is a public noise nuisance and licensed premises associated with disorder. Where the disorder is associated with pubs and clubs the first forum will be the licensing system and local licensing boards are best placed to deal with this.

As with private landlords, we would not envisage a situation where a closure order would be served without all reasonable attempts having been made to engage the owner in implementing alternative approaches.

The premises closure order will only be aimed at closing down the properties of irresponsible owners who have repeatedly failed to manage their properties or refused to engage with local agencies.

In fact, one aspect of anti-social behaviour is that it affects local businesses as people become too frightened to use or visit them. In Bristol, takings for local businesses increased by 80% following the introduction of a dispersal order. The

order was lifted in early 2005 and the ASB co-ordinator reports that the area has remained vibrant and safe.

Only one of the 21 closures in Scotland has been issued on commercial premises - a massage parlour in Strathclyde which had made life hell for local residents with constant visitors, kerb crawlers and harassment of female neighbours.

We therefore do not believe that there will be any additional significant burden to law-abiding businesses and in fact will bring benefits to them.

While responses from the business community were received to the wider consultation on new tools to tackle anti-social behaviour, none raised any issues over the proposal for the premises closure.

### **Environmental costs and benefits**

A poor physical environment – litter, graffiti and abandoned cars – is associated with a fear of crime and neglect by authorities.

One in six people perceive a high level of anti-social behaviour in their local area, which is underpinned by their experiences of anti-social behaviour and disorder. Two of the most frequently quoted signs of anti-social behaviour are rubbish or litter and vandalism and graffiti, and the areas most closely affected by anti-social behaviour where people are living on a low income, in social housing or inner city estates, and anywhere falling within the 10% most deprived wards in the country. Of those experiencing vandalism and graffiti, over half (56%) say that it has a substantial impact on their quality of life.<sup>34</sup>

These strong signals of disorder increase concern about neighbourhood safety and can cause people to withdraw from public spaces and create a spiral of decline.

Public services need to respond quickly to such signals and counter the feeling that an area is neglected before problems multiply. The closure can provide the opportunity for environmental and regeneration benefits as these properties are likely to be at the centre of considerable neglect and disorder. A period of closure may provide the catalyst for the property and surrounding area to be cleaned up and maintained.

### **Summary of costs and benefits**

In summary we believe that any additional costs as a result of the introduction of a new premises closure tool will be off-set against the benefits. These properties and any occupiers will already be in the system and will already be the subjects of a range of activities, interventions and costs. If the closure power were not available agencies would be forced to repeatedly use existing interventions and escalate their response to a greater cost.

We believe that there will be considerable social, economic and environmental benefits.

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<sup>34</sup> *“Perceptions and Experience of anti-social behaviour: findings from the 2004-2005 British Crime Survey”*. Anna Upson. OLR 21/06, October 2006.

OPTION	COST	BENEFIT
<p>1. Do nothing and continue to use existing powers under the Anti-Social Behaviour Act 2003, the Licensing Act 2003 and the Housing Act 2004.</p>	<p>No additional operational costs to practitioners.</p> <p>But increased costs as practitioners will be forced to record and respond to continued complaints, estimated to be around £400 each.</p> <p>Housing management costs, e.g. repairs and maintenance would continue to accrue estimated to be £150 per visit.</p> <p>Housing manager and ASB manager staff costs would continue to rise, at around £1,000.</p> <p>Continued pressure on other local services, such as the fire service. The cost of a fire brigade response to a fire or false alarm on a domestic property is £3,200.</p> <p>Interventions would escalate at a higher cost – eviction and possession hearings are estimated to be between £6,500 and £9,500 for anti-social behaviour cases.</p> <p>Criminal proceedings may need to be pursued; prosecution for a common assault offence is around £500.</p> <p>There will remain some “untouchable” perpetrators for which agencies may have to wait until the behaviour escalates to criminal activity.</p>	<p>No identifiable benefits</p>
<p>2. Legislate for a new tool</p>	<p>The operation of the closure power is expected to be in the region of £500 - £2,700 for each closure order.</p> <p>There may be some additional costs for the local authority in dispensing any homelessness duties. This is estimated to be</p>	<p>The National Audit Office reports that by tackling and reducing anti-social behaviour significant monetary and emotional savings can be made.</p> <p>Much of the cost of responding to reports of anti-social behaviour falls to the local</p>

	<p>around £2,300 per year per case.</p> <p>Tenants and owner occupiers will retain their rights and their obligations and they will continue to owe rent/mortgage payments during the closure period.</p> <p>There will be some additional court costs and legal aid costs.</p>	<p>authority. The new closure tool will provide them with an additional means with which to put an end to nuisance behaviour and could save them from pursuing more costly and lengthy interventions.</p> <p>The closure will provide the hook with which to reach perpetrators who may up until that point have refused offers of support. Research from the US estimates that overall savings by diverting an individual from a life of anti-social behaviour and crime range from 1.7 to 2.3 million dollars (approx £0.9 to £1.2m).</p> <p><u>In summary</u> - based on an estimated 100 closures per annum the costs to local agencies (police and local authority) for using the tool will be around £385,000 (including potential homelessness duty costs). However, practitioners advise that by using the closure proportionately and effectively to tackle the significant and persistent nuisance centred around these properties, that considerable longer-term savings will be made. The Government will fund any costs in excess of savings, following a review of activity levels on implementation.</p> <p>There will also be considerable emotional and health benefits for both the victims and perpetrators. Children and vulnerable adults will benefit as a result of the closure being taken to put an end to the harmful activity.</p> <p>There will also be environmental and regeneration benefits as these properties are likely to be at the centre of considerable neglect and disorder. A period of closure may provide the catalyst</p>
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		for the property and surrounding area to be cleaned up and maintained.
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We will monitor the implementation and development of the use of the power to assess whether significant new burdens and costs are being felt.

## **6. SMALL FIRMS IMPACT TEST**

As outlined above, the premises closure order will not directly impact on those businesses acting responsibly and within the law.

We therefore do not believe that there will be any additional burden to small firms, a view supported by the Small Business Service, which also added that this could prove to be beneficial to responsible and legitimate businesses by making the surrounding area safer and more attractive to visit. These are often the hidden costs of the impact of anti-social behaviour.

## **7. COMPETITION ASSESSMENT**

This proposal is likely to have little or no effect on competition.

## **8. ENFORCEMENT, SANCTIONS AND MONITORING**

### Enforcement and sanctions

The police, in close liaison with the local authority, will enforce the closure.

In order to maintain credibility and continue to offer protection to local residents, any breach of the premises closure measures must be backed up with powerful and effective sanctions. We expect the level of breach for a premises closure to be fairly low but where a breach does take place a sanction is necessary to back up the court order. This will follow the existing sanctions for the crack house closures i.e. a fine not exceeding level 5 or imprisonment not exceeding six months, or both.

### Monitoring

We will implement robust monitoring arrangements to review the use and effectiveness of this power, alongside other anti-social behaviour interventions.

## **9. IMPLEMENTATION AND DELIVERY PLAN**

Subject to the Criminal Justice and Immigration Bill receiving Royal Assent, the Government would expect to bring the new provisions into effect within six months. This would include the issuing of guidance and the laying of the commencement order.

## **10. POST- IMPLEMENTATION REVIEW**

On-going monitoring and assessment will take place to consider both the use of the power and whether improvements can be made, alongside other community safety interventions.

## **11. SUMMARY AND RECOMMENDATIONS**

Following discussions with practitioners and responses to the consultation paper, it is clear that the premises closure is necessary and will be welcomed by practitioners and victims of anti-social behaviour, and will also provide the means with which to address the underlying causes of the perpetrator's behaviour.

**12. DECLARATION**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Rt Hon Baroness Scotland of Asthal QC**  
**Minister of State for Crime Reduction**  
**25 June 2007**

# **Regulatory Impact Assessment: One Year Review of Juveniles' Anti-Social Behaviour Orders**

## **1.0 Title of Proposal**

1. One Year Review of Juveniles' Anti-Social Behaviour Orders.

## **2.0 Purpose and intended effect**

### **2.1 Objective**

2. Current Home Office guidance on the use of Anti-Social Behaviour Orders against juveniles recommends that applicant authorities carry out an assessment after one year to review the offenders' progress towards compliance with the order, with a view to varying it if circumstances warrant such a course. This is good practice. The Home Office proposes to make this recommendation a statutory requirement.

### **2.2 Background**

3. Anti-social behaviour orders (ASBOs) were introduced by the Crime and Disorder Act 1998 in England and Wales and have been available since April 1999. The powers to impose ASBOs were strengthened and extended by the Police Reform Act 2002, which introduced orders made on conviction in criminal proceedings, orders in the county court proceedings and interim orders. The Anti-Social Behaviour Act 2003 together with the Serious Organised Crime and Police Act 2005 strengthened and clarified the law further. The Home Office has published guidance to help practitioners make best use of ASBOs as a tool for tackling ASB in their area, and the "Respect" website supplements this with case studies, guidance updates, templates etc.

4. The approach to ASBOs made against young people is generally the same as for adults. ASBOs are community orders and the needs of the community should be equally balanced against those of the young person. Although the welfare of the young person should be considered, it is not the principal purpose of the order. The harm a young person's behaviour causes to others must be given just as much consideration. However, an assessment of a young person's needs and circumstances should always be carried out as part of the application process for an ASBO.

5. Parenting Orders and Individual Support Orders can be attached to ASBOs. The ISO provides a means by which a 10-17 year old with an ASBO is required to receive interventions that address the cause of their anti-social behaviour. Parenting Orders contain requirements on the parent or guardian and will help the parent or guardian to respond more effectively to the challenges of parenting. Both of these orders help young people and parents to observe the prohibitions set out in the ASBO, and so avoid breach.

6. In their report of March 2005 on anti-social behaviour, the Home Affairs Select Committee said that:

“We agree with Barnado's and others that in relation to young perpetrators of ASB, it may be inappropriate to issue ASBOs that last for a minimum of two years. We recommend that, in the case of children under the age of 18, the law is amended so as to give magistrates greater discretion to set the duration of the ASBO.” (Paragraph 222)

7. The Government's response to this point, published in June 2005, was that:

“A 2 year minimum period was devised to give communities a decent period of respite from often long standing anti-social behaviour.

“While the order itself has a minimum duration of two years, there is nothing to prevent a prohibition within an order being of more limited duration (R(Lonerghan) v Lewes Crown Court [2005]). In addition, the process of varying or discharging conditions is relatively straightforward. We do understand the concerns about the minimum period of ASBOs, particularly in respect of young people and will continue to monitor the position.”

### **2.3 Rationale for Government intervention**

8. It is good practice, as reflected in Home Office guidance, to review ASBOs periodically, to check progress with compliance with the terms of the order. This is particularly important with young people. For them, a one year review is an important safeguard that will ensure that they are receiving the support they need to prevent them breaching the terms of their ASBO and causing further harm to the community. Patterns of behaviour may have changed significantly in a year – and this measure provides that check and balance.

9. On 20 December 2005, Home Office Ministers announced that they would seek to make this practice universal. We intend to achieve this through two key policy levers:

- providing detailed guidance on the operation of such a scheme, followed up with training and awareness raising, with a view to making this practice a mainstream part of active case management;
- amending the legislation on ASBOs to make this review a requirement, as well as permitting the more flexible use of ISOs, for example to ensure that they are available on conviction, that they can be made after the order is made, and that the subject can benefit from further ISOs.

### **3.0 Consultation**

10. The Home Office has worked closely with the Department for Constitutional Affairs to assess the anticipated regulatory impact of this measure for applicant authorities, their partner agencies and those individuals with ASBOs which this change will affect.



## 4.0 Options

11. There are two possible options for achieving the objective of regularising the practice of reviewing young people's ASBOs after one year:

12. **Option 1: Regularising the practice of reviewing young people's ASBOs after one year through guidance.** The existing guidance does point authorities towards reviewing young people's ASBOs after one year, for the reasons set out above. Some authorities do so, but that is not the case across the board. This is an important policy objective, and experience shows that, although it is a simpler route to take, non-binding guidance simply does not carry sufficient weight to make this practice universal.

13. Benefits: Using guidance would be quicker to implement.

14. **Option 2: Regularising the practice of reviewing young people's ASBOs after one year through primary legislation.** This element of the existing guidance could be put on a statutory footing, which would oblige all authorities to carry out a one year review. This would be more complicated than simply revising the guidance, but would have the advantage of achieving compliance with the policy. It would of course be done in tandem with providing detailed practitioner guidance on how the scheme will work.

15. Benefits: It will ensure that all authorities are consistent in their review of young people's ASBOs.

## 5.0 Costs and Benefits

16. There would be some impact on the public sector. There are currently seven types of applicant authority, but the volume falls mainly to the police and local authorities. For each ASBO, there would need to be a multi-agency case conference. However, these occur anyway, as ASBOs, particularly those involving young people, require active case management, and there is thus no additional cost from timetabling such conferences to conform with the new regimen. There may be some cost from additional court hearings to vary prohibitions or even discharge orders after review. If 10 per cent. of the 1,200 juvenile ASBOs made each year require a further variation hearing as a result of this policy, then those 120 additional cases will cost HMCS some £72k to process. This costing is based on assumptions around activity levels, which need to be kept under review.

17. Orders on conviction are obtained by the Crown Prosecution Service. However, as the CPS does not participate in case management, the obligation to carry out the review will fall to a lead agency within the CDRP (the default will be the police, but such arrangements need to be agreed locally), as will the task of making any further applications to the court (eg. for an ISO, or to vary the Order).

18. The obligation to carry out this review would not be retrospective, but we would expect that it would apply to any ASBOs whose first anniversary

falls after the commencement of the new requirement. It would not apply to ASBOs whose first anniversary falls before commencement, and there would thus be no 'backlog' to eliminate, but rather cases would arise according to their own lifespan. Our guidance will recommend that ASBOs that have lasted up to, say, 18 months ought to be reviewed, even if there is no statutory obligation to do so.

19. There would be no appeal mechanism built into the review process (applicant authorities are subject to the normal review mechanisms for their decisions), and therefore there will be no costs arising from this.

20. If there are increased numbers of ISOs made, then that will impact upon YOTs. However, it is difficult to see that the YOT would not be involved with the case anyway, and it would therefore fall to local agreement and negotiation to decide whether the ISO was the most cost effective option in any given case.

## **6.0 Impacts**

### **6.1 Impact on public sector**

21. There would be some impact on the public sector as set above.

### **6.2 Impact on business**

22. Better management of interventions to combat anti-social behaviour will have no direct impact on businesses but will, by improving an areas' amenity, benefit them indirectly.

#### **6.2.1 Small firms Impact Test**

23. This measure will not adversely impact small businesses.

### **6.3 Impact on charities**

24. None, except for those charities involved in YOT services, who do of course stand to gain, however slightly, from the change.

### **6.4 Rural Impacts**

25. None.

### **6.5 Race Equality Impacts**

26. Findings of the British Crime Survey indicate that those living in 'hard-pressed' areas had odds of perceiving high levels of anti-social behaviour (ASB) that were four times higher than those in 'wealthy achiever' areas. We know that around 70% of ethnic minorities live in the 88 most deprived local authority areas.

27. It is likely that ASB measures are more extensively used where there are heavier concentrations of BME groups due to the spatial distribution of those communities in areas which experience high levels of crime. However, there is no evidence one way or another to conclude whether BMEs are more likely to be the violators or victims of ASB.

## **6.6 Health Impacts**

28. There are no health impacts associated with this provision.

## **6.7 Sustainable Development Impacts**

29. There are no sustainable development impacts associated with this provision.

## **7.0 Enforcement sanctions and monitoring**

30. This will be a statutory requirement on a variety of public bodies and the usual performance management mechanisms will ensure compliance. At the level of individual cases, non-compliance could cause applicant agencies additional expense through lost appeals. Should evidence emerge from that source and/or from our evaluation that agencies were routinely ignoring the policy then we could revisit their status as applicant authorities

31. The Home Office collects statistics on ASBO activity, through court returns. This will help to monitor the impact of the policy change in terms of both case management and any impact on court and other costs.

## **9.0 IMPLEMENTATION AND DELIVERY PLAN**

32. Subject to the Criminal Justice Bill receiving Royal Assent, the Government would expect to bring the new provisions into effect within four months with the following timetable.

- Royal Assent (RA)
- Guidance issued to applicant authorities and the courts about new provisions
- Commencement order to be made giving effect to new provisions – RA plus two months (bring provisions in to force two months later)
- Provisions and monitoring implemented – RA plus four months.

## **10.0 POST- IMPLEMENTATION REVIEW**

33. As part of the normal policy development process, we evaluate the effectiveness of actions to tackle ASB. This policy change will form part of that process.

## **11.0 SUMMARY AND RECOMMENDATIONS**

34. It is clear that the annual reviews of ASBOs is necessary and would strengthen their use ensuring that the prohibitions remained valid and current. They are welcomed by practitioners and groups with an interest in anti-social behaviour.

35. The Home Office recommends "Option 2: Regularising the practice of reviewing young people's ASBOs after one year through primary legislation" and intends to make this a statutory requirement.

## **12.0 Declaration**

36. I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Rt Hon Baroness Scotland of Asthal QC**  
**Minister of State for Crime Reduction**  
**25 June 2007**

### **Contact**

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# **Partial Regulatory Impact Assessment for Equipping NHS Health Bodies to Deal with Behaviour Causing a Nuisance or Disturbance on NHS Healthcare Premises**

## **Introduction**

1. Equipping NHS health bodies to deal with behaviour which causes a nuisance or disturbance to NHS staff on NHS healthcare premises.

## **Purpose and Intended Effect**

### *Objectives*

2. The objectives of this measure are:
  - to give NHS health bodies in England a mechanism to deal with behaviour that causes a nuisance or disturbance on their premises
  - to reduce the impact of this behaviour on the delivery of healthcare and/or distress to staff, patients or the public
  - to prevent this type of behaviour escalating to more serious criminal offences.
3. It is intended that any measures introduced will help to:
  - focus on action to deter and prevent more serious offences from occurring in the first place, such as assaults on NHS staff
  - improve the immediate and long-term safety and security of NHS staff, patients, property and assets
  - strengthen the range of sanctions that are available to health bodies, which will have a further deterrent effect on would-be offenders
  - reduce the current levels and impact of crime within the NHS.

## **Background**

4. In response to concerns about security related issues in the NHS, the Government established the NHS Security Management Service (SMS), part of the Counter Fraud and Security Management Service (CFSMS), a division of the NHS Business Services Authority (a Special Health Authority) in 2003. It has overall responsibility for all policy and operational matters related to the management of security in the NHS. Areas particularly targeted for action include violence against NHS staff, the security of NHS property and assets and the security of maternity and paediatric units. In addition, low level nuisance behaviour has been identified as a particular problem for some NHS health bodies.
5. Tackling this type of behaviour also sits within the wider context of the Government's Respect Agenda, which is being taken forward by a new Cross-Governmental Task Force. This task force is chaired by Home Office Minister Hazel Blears and includes Ministerial and official

representation from across the Government, including the Department of Health (DH). The key objective of the new unit is to drive forward the Government's Respect agenda, including a coordinated approach to tackle anti-social behaviour within society, including alcohol-related disorder.

6. The Respect Action Plan sets out a commitment to consider proposals to give NHS health bodies more powers to tackle incidents of nuisance or disorderly behaviour.

## **Rationale for Government Intervention**

7. The NHS SMS has commenced a programme of work to obtain accurate information on the nature, scale and extent of all security-related problems in the NHS. Although information from this will not be available until the end of 2006-07, the information already available about physical assaults demonstrates the potential size of the problem. These show that in England in 2004-05 there were 43,097 physical assaults against NHS staff working in Mental Health and Learning Disability settings, 10,758 in the acute sector, 5,192 in Primary Care Trusts and 1,333 in Ambulance Trusts.
8. The need to do more to tackle this problem is further supported by the findings from NHS SMS commissioned surveys of both NHS staff and the public. In a public opinion poll of approximately 1,900 adults conducted in August 2005, 76% of respondents were very concerned about physical assaults on NHS staff and 67% in relation to verbal abuse.<sup>35</sup> In a survey of 1,900 frontline NHS staff in February 2006, around 20% of respondents did not feel that their workplace provided a safe and secure environment for them to work in.<sup>36</sup>
9. Assaults on NHS staff have been identified as a priority for action for the NHS SMS and a range of measures have already been introduced to tackle physical violence. For example, the NHS SMS has been successful in working with the police and the Crown Prosecution Service (CPS) to increase the numbers of criminal sanctions taken against offenders, as well as supporting the NHS in pursuing private prosecutions, particularly against those who commit serious offences of violence and abuse against NHS staff. This has been reflected in the fact that there has already been a significant rise in the number of prosecutions identified involving those who have committed physical assaults against NHS staff: from 51 in 2002-03 to 759 in 2004-05.
10. However, there remains a particular problem in relation to behaviour causing a nuisance or disturbance within the NHS. This type of incident may not be as immediately damaging as other more serious incidents of

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<sup>35</sup> *Violence towards NHS frontline staff from the public* – MORI Poll conducted for the NHS CFSMS Research Unit, April – May 2004

<sup>36</sup> *Creating A Pro-Security Culture: Finding out the public's perception of security management in the NHS* – NOP World Survey for the NHS CFSMS Research Unit, November 2005

violence, but the impact in terms of low staff morale, absenteeism due to sickness and recruitment and retention, although harder to quantify, is nevertheless very significant. First and foremost, dealing with these incidents diverts NHS staff away from providing care. There is also the potential for these incidents to escalate into more serious situations, such as physical assaults on staff, theft of NHS assets or damage to NHS property.

11. There is no available data on the exact numbers of this type of incident as a national recording system is yet to be established, as has been done with physical assaults. However, the physical assault data illustrates the type of environment in which NHS staff work. Research has shown though that a large acute trust may have to deal with 80-100 incidents in one year. A smaller acute trust may experience 10 incidents annually. Every one of these incidents may result in a member of staff being disrupted in the performance of their duties. Measures exist to deal with the more serious problems such as assault, but health bodies have few effective means of dealing with less serious incidents that nevertheless have an impact on their service delivery.
12. In terms of dealing with nuisance behaviour, NHS health bodies have recourse to the yellow/red card system, which was introduced under the Zero Tolerance Campaign in 2001. This scheme enabled Trusts to issue a series of warning letters to individuals, advising them that their behaviour was unacceptable and could ultimately lead to Trusts making a decision to exclude the individual. However, discussions with 38 NHS health bodies suggest that implementation has been patchy, possibly as the policy was not backed up by legal powers.
13. Furthermore, there was no clearly defined structure in place across the NHS to deal with the administration of the scheme and there were no overall standards or guidance. The scheme is likely to have been more widely used if it had been backed up by clear legal powers and the structure to implement these.
14. Health bodies can also make use of criminal legislation to deal with disruptive individuals on their premises. For example, it is an offence under section 5 of the Public Order Act 1968 to use threatening, abusive or insulting words or behaviour, or disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress. It is also possible for the police to apply for an anti-social behaviour order (Asbo) under section 1 of the Crime and Disorder Act 1998.
15. However, the existing powers do not always provide NHS health bodies with sufficient means to deal with disorderly behaviour on their premises. NHS health bodies frequently experience behaviour which disturbs staff and patients and affects the ability of staff to deliver healthcare, but falls below the threshold for the existing public order offences. Very often, this means that the police are unable to respond to incidents involving disruptive individuals, which may escalate and result in NHS staff being

assaulted or NHS property being damaged. In addition, Asbos are useful for persistent offenders but would not provide an immediate solution to incidents as they happen. An individual will not have committed an offence unless there is a relevant Asbo in place at the time.

14. Alternatively, NHS health bodies can resort to the use of the civil law to obtain injunctions against individuals, but this can often be time-consuming, slow and costly and again, is more appropriate to persistent offenders.
15. NHS health bodies are therefore left without a satisfactory solution to the problem of dealing with behaviour that causes a nuisance or disturbance on healthcare premises.

## Consultation

### *Within Government*

16. The policy development for these proposals has included discussions with key stakeholders. Within Government, this has included the Respect Task Force, the Home Office and the Department of Constitutional Affairs. Other stakeholders consulted at an early stage were UNISON, British Medical Association (BMA), Royal College of Nursing (RCN), as well as the Association of Chief Police Officers (ACPO), NHS Trust Security Management Directors and Local Security Management Specialists.

### *Public Consultation*

17. In June 2006, the Department of Health published a consultation paper, *Tackling nuisance and disturbance behaviour on NHS healthcare premises: a paper for consultation*. The consultation period ended on 1st September 2006 and produced 158 responses.<sup>37</sup>
18. Organisations responding included NHS bodies, professional associations, Royal Colleges, statutory regulatory bodies, patient representative bodies and service user representative groups. Responses were also received from individual members of the public and members of NHS staff. Overall, the majority of respondents supported the proposals. There was widespread recognition of the problem that nuisance and disturbance behaviour causes for NHS health bodies. There was general agreement that a new offence was needed to tackle this sort of behaviour and a formalised process for the removal of these individuals was welcomed. Over three-quarters (78%) of those respondents who expressed a view agreed that a new offence and power of removal was needed and 22% did not agree. Amongst those supporting the proposals, it was generally agreed that this sort of behaviour impacts on delivery of healthcare and is frustrating and sometimes threatening for staff and patients.

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<sup>37</sup> A summary of the consultation responses is attached at Annex C and can be found at the following link: <http://www.dh.gov.uk/Consultations/ResponsesToConsultations/fs/en>



19. While most respondents felt that the proposals were more relevant to the acute setting, it was also recognised that there were some examples of nuisance and disturbance in other settings. However, the lack of suitably trained security staff, particularly in primary care and mental health settings, was highlighted by many respondents as a potential issue. Other areas of substantial debate and discussion were the potential impact on those with mental health problems or other conditions affecting their behaviour and the safeguards that could be implemented.

## **Options**

20. Three options have been identified:

### **Option 1: Do Nothing**

### **Option 2: Employ more security officers within NHS health bodies**

### **Option 3: Create an offence of nuisance or disturbance on NHS healthcare premises with a power of removal attached**

This legislation would be designed to deal with behaviour that is diverting resources away from the treatment of patients and impacting on the delivery of healthcare, thus producing cost savings to the NHS. Potential offenders would be made aware that their behaviour is unacceptable and that they may be removed and face a fine of up to £1000.

## **Costs and benefits**

### *Sectors and Groups Affected*

21. The health sector and groups within it, such as staff and patients, will be affected by the three options outlined above in varying degrees. The greatest impact of option 2 would be the extra cost to NHS health bodies of employing security officers. Option 3 will also involve some extra cost to health bodies in terms of training staff. However, these health bodies will also feel the positive impact of these proposals as described below.

### *Benefits*

#### **Option 1 – Do Nothing**

22. The NHS SMS would continue to take action and make progress in all areas of security management to reduce the impact of crime on the NHS. However, if no further measures are introduced to tackle those who create a nuisance or disturbance on NHS healthcare premises, this behaviour will continue to affect the ability of staff to deliver healthcare. There is also the

clear risk that the ability to reduce the incidents of violence and abuse in the NHS will be less effective.

### **Option 2 - Employ more security officers within NHS health bodies**

23. Employing extra security staff would have some deterrent effect and may result in a reduction in levels of crime in health bodies. However, this is difficult to quantify and the benefit is likely to be diminished without supplying security staff with additional powers to deal with the type of behaviour that presents staff, in some areas, with a problem on a daily basis.

24. As stated earlier, both staff and members of the public have expressed concern at the level of crime, particularly violence, within the NHS. Increasing the number of security staff within NHS premises may act to reduce the fear of crime; the visible security presence reassuring patients and staff that they are protected and the problem is being dealt with.

### **Option 3 - Create an offence of nuisance or disturbance on NHS healthcare premises with a power of removal attached**

25. This will have the benefit of reducing the numbers of incidents by giving NHS health bodies an additional mechanism to enable them to deal with incidents of low level problem behaviour more effectively and efficiently. Where a 'responsible person' (as designated by the Chief Executive of the health body) suspects that an offence has been committed they will be able to authorise removal of that person by specially trained security officers, allowing NHS staff to carry out their duties unhindered.

26. This will in turn create a better working environment for staff. For various reasons, staff in the health and social work sector carry above average annual days lost to ill health per worker and above average rates of work related stress, depression or anxiety.<sup>38</sup> Rates of ill health retirement are also higher within the NHS<sup>39</sup>. Reducing the number of incidents of nuisance and disturbance may play a part in tackling these problems by reducing stress levels and having a positive effect on morale. This may have an impact on absenteeism, recruitment and retention. The true cost of retiring a nurse on ill health grounds is estimated at over £100,000<sup>40</sup>. Any policy which is aimed at improving the working conditions of staff may result in significant financial benefit for the NHS.

27. In addition the legislation will allow removal of a person before their behaviour escalates into a more serious situation. Preventing incidents such as violence, theft and criminal damage from occurring will produce financial savings for the NHS.

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<sup>38</sup> *Self-reported work-related illness in 2004/05: results from the Labour Force Survey* – HSE, August 2005

<sup>39</sup> *The management of ill health retirement in the public sector* – HM Treasury, July 2000

<sup>40</sup> *ibid.*

28. Whilst not all assaults on NHS staff can be prevented by targeting low level incidents of nuisance and disturbance, even if only a small percentage of these are prevented in this way, this has the potential to save a substantial amount of money to the NHS. While the total cost of assaults is not known, if every assault resulted in just one day's absence from work and one day's agency cover, this results in an estimated cost to the NHS of £9,746,140.<sup>41</sup> (See Annex A for estimates of savings based on absences due to assault.)
29. The Home Office have evaluated the use of Penalty Notices for Disorder (PND) in relation to alcohol-related disorder. A number of police forces use PNDs as part of a preventative or early intervention tactic to curb public disorder situations from escalating. There is evidence that it reduced the numbers of more serious offences within the violent crime category. "The data showed that ... the most serious violent crime showed a significant fall – 9% in the areas taking part in the campaign, producing a 3% national fall".<sup>42</sup> It is hoped that targeting low level incidents in the NHS could produce similar effects.
30. The figures above concentrate solely on reducing the number of physical assaults in the NHS, the area most likely to see an impact from this new legislation. These proposals (in addition to the measures already introduced by the NHS SMS, as part of the overall NHS security management strategy) could in the longer-term produce savings for the NHS of between £30 - £68m<sup>43</sup> if such crime was reduced by 10%. However, accurate figures will be available after 2006/07 on the cost of security-related crime to the NHS, which can be used to set meaningful and achievable targets in the future.
31. The proposals may also produce some savings to the Criminal Justice System (CJS). Based on Home Office figures in *The economic and social costs of crime against individuals and households in 2003-04*, the cost to the CJS of the types of offences suffered by NHS staff ranges from £255 for common assault to £4,345 for serious wounding. Preventing more serious crimes from occurring in the NHS will reduce the greater burden of investigation and prosecution of these offences. The new offence would be punishable by a fine not exceeding level 3 on the standard scale.
32. Creating the new offence and giving NHS health bodies clear powers to deal with disorderly behaviour will, more generally, help to generate a pro-security culture amongst NHS staff, professionals and patients, as well as improve their perceptions of safety and security at work or while they are being treated. This will create better working conditions for NHS staff and

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<sup>41</sup> Based on figures from *NHS Staff Earnings Survey* – Health and Social Care Information Centre, August 2004

<sup>42</sup> Penalty Notices for Disorder Final Report: Review of Practice across police forces, Home Office, 13 February 2006

<sup>43</sup> Based on estimates produced in 2002/03 by Department of Health/Home Office on the costs of all crime to the NHS

a better treatment environment for patients. Survey data outlined above shows that both staff and patients currently have concerns about the safety and security of NHS healthcare premises. Introducing these proposals will help to improve these perceptions, by allowing NHS health bodies to deal quickly and effectively with problems.

## **Costs**

### **Option 1 – Do Nothing**

33. There would be no extra costs to health bodies if new measures were not introduced. However, the cost of crime and the impact of violence within the NHS has been discussed above.

### **Option 2 - Employ more security officers within NHS health bodies**

34. The costs of employing more security staff would far outweigh the costs of implementing option 3. However, it is impossible to predict how many extra security staff would be needed as it would be dependent on the problems faced, the type, location and situation of each NHS health body. However, if all NHS Acute Hospital Trusts, Mental Health and Learning Disability Trusts and Primary Care Trusts in England (currently, a total of 543 health bodies) were to employ one extra in-house security officer, the total cost to the NHS would be an estimated £13,963,788 (£9,106,653 for a contracted officer). If five extra in-house officers were employed the cost would rise to £69,818,940 per annum. (£45,533,265 for contracted officers).

35. There would be costs for NHS health bodies associated with the ongoing training and recruitment of the additional security staff. Again, this would depend on the numbers employed.

36. While a visible security presence may serve to reassure NHS staff and patients, it may also be seen as an undesirable presence within a caring, treatment environment. In addition, without further powers to deal with problem behaviour, the positive impact of extra security staff would be diminished.

### **Option 3 - Create an offence of nuisance or disturbance on NHS healthcare premises with a power of removal attached**

37. We anticipate that the overall costs of this proposal would not be substantial. Firstly, there would be no obligation on health bodies to take up the proposal. Those Trusts which do use the new powers are likely to be the larger acute Trusts which already have an identifiable problem with nuisance behaviour, most of which already employ security staff. We anticipate that NHS bodies such as Primary Care Trusts and Mental Health Trusts will only rarely need recourse to these powers.

38. In addition, we hope that these measures will be used as a preventative measure and removing a person and reporting them to the police will only

be used as a last resort. Therefore, we estimate that only 1,000 cases will reach magistrates' court annually. Consultation with the Home Office, Department for Constitutional Affairs and the Crown Prosecution Service suggests that this would result in a total of approximately £360,000 in police costs and £950,000 in terms of court and prosecution costs, including legal aid.

39. The main costs relating to the new powers will be focused on the need to provide the 'responsible persons' and NHS security staff with a comprehensive training package to ensure that the legislation is implemented fairly and safely. Some of the necessary training may already be provided to such staff in line with the employer's health and safety obligations. The total cost will be dependent on how many NHS Trusts decide to use these powers and the number of staff that will need to be trained. However, if a trust was to choose to train 4 'responsible persons' and 10 security staff, this would cost approximately £2,700 (based on a three day training course at £225 each, with the NHS SMS providing the first two places for 'responsible persons' at no charge). As stated above, the use of the legislation is not mandatory. Based on information from the consultation, it is estimated that around 100 acute trusts are likely to take up the powers.
40. Other than training, it is anticipated that the majority of costs will be covered by the NHS SMS. Guidance will be produced to accompany these additional powers to ensure that they are used appropriately and effectively. There will also be some costs involved in the launch, publicity, awareness raising, as well as monitoring of the use of the legislation, which will be absorbed by the NHS SMS.
41. If the powers were used without caution, there may be concern that they could be used to prevent users expressing a genuine complaint about an aspect of NHS service, or that patients may go without necessary treatment.
42. However, the legislation would only cover situations where a person has no lawful authority to be present on NHS healthcare premises and is behaving in a way that is causing a nuisance or disturbance to staff. If a person refuses to moderate their behaviour or leave when requested to do so, their behaviour could lead to them being removed. The guidance and training would clearly outline the steps that the 'responsible person' would need to take before removing a person. They would be expected to demonstrate that every effort had been made to resolve the situation before making use of the legislation.
43. Furthermore, its application will have necessary safeguards built in to ensure that individuals will not be removed where they require medical treatment, care or advice or are unable to comprehend their actions or where removal could endanger their physical and mental health. These safeguards are being developed based on responses to the consultation and further discussions with stakeholders.

## **Equity and fairness including race equality assessment**

44. There is little evidence to suggest that these proposals, if implemented in accordance with appropriate safeguards, would have an adverse impact on any particular minority group. However, available evidence does suggest that use of and satisfaction with the NHS can be affected by race, age, disability and gender, amongst other things. Therefore, an Equality Assessment of the impact of the proposals has been produced.
45. We will consider monitoring arrangements for the application of these powers in practice to ensure that no group is disadvantaged as a result.

## **Small firms impact test**

46. This proposal will have no impact on small businesses.

## **Competition assessment**

47. This proposal will have no discernable impact in terms of competition as the new powers will be exercised by NHS health bodies, with guidance and support provided by the NHS SMS.

## **Rural proofing**

48. We envisage no impact on rural communities as a result of this measure.

## **Enforcement, sanctions and monitoring**

49. The decision to remove someone who displays behaviour which causes a nuisance or disturbance will be undertaken by the 'responsible person' of the NHS health body. The NHS SMS will provide guidance to ensure that the scheme is effectively regulated. The responsibility to ensure that the policy is properly implemented at the local level will be that of the Security Management Director, with central support and guidance from the NHS SMS.
50. Individual health bodies will be required to monitor their use of the legislation and powers. In addition, monitoring to ensure that the measures have been effectively implemented will be part of the NHS SMS quality assurance and inspection programme and its work on standards with the Healthcare Commission. This legislation will be monitored and information will be collected by the NHS SMS on a regular basis including when the powers were used, how they were used, against whom and why.

## Implementation and delivery plan

51. The proposed legislation may commence in April 2008. Towards the end of 2007, a training programme for 'responsible persons' and security staff will become available in order to prepare trusts who wish to make use of the legislation. Implementation following this will be for health bodies to manage locally.

## Post-implementation review

52. In addition to the Government's commitment to review all new legislation after 3 years, the information collected from health bodies will be used to review the use of the legislation.

## Summary and recommendation

### Summary costs and benefits table

Option	Benefits	Costs
1	<ul style="list-style-type: none"><li>• Nil</li></ul>	<ul style="list-style-type: none"><li>• No costs associated but incidents of nuisance and disturbance will continue to impact on the delivery of healthcare</li></ul>
2	<ul style="list-style-type: none"><li>• Minimal deterrent effect</li></ul>	<ul style="list-style-type: none"><li>• Likely to be over £10m</li></ul>
3	<ul style="list-style-type: none"><li>• Staff are able to carry out their duties unhindered by incidents of nuisance and disturbance.</li><li>• An improvement in absenteeism, morale, recruitment and retention.</li><li>• Prevention of more serious incidents.</li></ul>	<ul style="list-style-type: none"><li>• £360,000 cost to police</li><li>• £950,000 cost to CJS</li><li>• £270,000 cost of training</li></ul>

53. This legislation would give health bodies an additional tool to tackle nuisance and disturbance behaviour effectively and safely. We would therefore recommend that the legislation is implemented in the 2007/08 legislative programme.

## Contact

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## Annex A

The range of estimated potential savings to the NHS as a result of 60,380 physical assaults in 2004-05, based on potential staff absence caused by such assaults [1] and agency cover that could have been required [2]:

<b>Number of Days Sick/Agency Cover</b>	<b>Total estimated % savings based on 10% reduction in assaults</b>
1 day sick/agency cover	£974,614
3 days sick/agency cover	£2,923,842
1 week sick/agency cover	£6,822,298
2 weeks sick/agency cover	£13,644,596
3 weeks sick/agency cover	£20,466,894
4 weeks sick/agency cover	£27,289,192

**Source:**

[1] Costs of staff sickness based on the average total earnings - including allowances - for all directly employed NHS staff, which as at August 2004 were £26,300 – NHS Staff Earnings Survey 2004.

[2] Cost of NHS agency cover based on average figures in relation to the cost of commercial agency nurses and doctors – figures provided by the NHS Professionals.



## **Initial Public Sector RIA**

### **1. Policy title**

#### **Revised Misconduct Procedures for police officers**

### **2. Purpose and Intended effect**

2.1 The purpose of the proposed Police (Conduct) Regulations is to implement the revised policy on dealing with allegations of misconduct against police officers. The policy was revised by a working party of the Police Advisory Board of England and Wales (PABEW) in the light of the recommendations of the 2005 Taylor Report that reviewed the current police officer discipline system.

2.2 The Taylor Report recommended that a new set of standards/code of ethics should be developed and that whilst any new system should continue to be regulated, the new procedures should be based on good employment practice and in particular adheres to ACAS principles.

2.3 The current procedures have been subject to wide spread comment not least by the Morris Inquiry and the Commission for Racial Equality report into professional standards within the police service. The procedures are seen as being too quasi judicial and not in keeping with modern employment practice leading to a lack of confidence by both police officers and the public who have cause to complain about the conduct of police officers.

2.4 The new procedures thus aim to address these deficiencies by:

- replacing the existing procedures to provide a fair, open, proportionate and timely method of dealing with misconduct issues;
- encouraging a culture of learning and development for individuals and the organisation; and,
- encouraging line managers to make use of the procedures to improve both individual and, by extension, force performance and service delivery.

2.5 Particular emphasis is put on the early assessment of the allegation to ensure that the response is proportionate, timely and fair.

2.6 The new procedures are based on ACAS principles whilst recognising that police officers are crown servants and not employees. There are therefore some differences to normal employment law practice to take account of this difference. The reason for basing the procedure on ACAS principles is to modernise the system making it look and feel more like the employment procedures that are in place for police staff and recognisable by the public.

### **3. Options**

#### Option 1 – Do nothing

3.1 Whilst the current Police Conduct Regulations were introduced on 1<sup>st</sup> April 2004, these regulations merely adjusted the 1999 conduct regulations to take account of the new complaints system and the introduction of the Independent Police Complaints Commission (IPCC). The actual procedures for dealing with police officer misconduct have not changed significantly since 1985. The reason the Taylor Review was commissioned was due to the fact that the current arrangements were subject of wide spread criticism from both within and outside the police service. All stakeholders and Ministers have agreed that it is not an option to do nothing.

#### Option 2 – Revise current procedures

3.2 It is intended that the new procedures, which will be based on ACAS principles, should modernise a key part of police management practice. The Police Advisory Board working party has developed and proposed revised misconduct procedures that were approved by Ministers.

3.3 The revised procedures, having been developed in consultation with key stakeholders, including the Police Federation of England and Wales, the Police Superintendents' Association of England and Wales, the IPCC, the Association of Chief Police Officers (ACPO), the Chief Police Officers' Staff Association and others, make the process for dealing with allegations of misconduct less judicial, lengthy, confrontational and bureaucratic.

3.4 The procedures have been drawn up in parallel with the new set of standards of professional behaviour and the revised procedures dealing with police officer unsatisfactory performance.

3.5 In terms of implementation, as with the existing procedures, any person with supervisory responsibility for a police officer will use them where appropriate. In addition each police force has a Professional Standards Department that is responsible for overseeing all police misconduct and complaints within the force. The responses to the 2006 consultation reinforced the view that the new procedures represent a significant improvement on the existing procedures.

3.6 The consultation, which included groups such as the National Black Police Association, British Association of Women Police Officers and the Gay Police Association, did not identify any potential problems which may disadvantage one group over another.

## **4. Costs and Benefits**

### Benefits

4.1 The benefits of adopting the new procedures are already listed set out above (purpose and intended effect).

### Costs

4.2 There are no direct cost implications for the Home Department. There will, however, be some initial training implementation costs which will be met by the police training provider, Centrex (NPIA as of 1<sup>st</sup> April 2007).

4.3 As regards costs in the context of the 43 Home Office police forces, independent research commissioned by the Home Office suggested that the new procedures could identify non cashable savings of £10 million. There are likely to be many areas where cost savings can occur:

- Improving the efficiency of police officers – thus improving value for money and quality of output;
- Reducing the number of police officers taken through the misconduct proceedings<sup>44</sup> which currently are long and resource intensive given investigation and meeting requirements.
- Reducing the time police officers are suspended from duty on full pay
- Reducing the number and time of senior police officers required to adjudicate at misconduct meetings
- Providing the opportunity for more streamlined procedures.
- Reducing the amount of files submitted to the Crown Prosecution Service where no prosecution of a police officer results.

## **5. Monitoring and evaluation**

5.1 Discussions are on-going regarding the development of a performance framework, involving all key stakeholders, to monitor the control and effectiveness of the new procedures.

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<sup>44</sup> The existing misconduct procedures, which have been revised in parallel with the UPP procedures, included an initiation trigger based on failing to perform duties. With the revision of both of the procedures it is likely that such cases will now go through the UPP procedures.

## 6. Implementation and delivery plan

March 2007	The new regulations were circulated for statutory consultation
July 2007	A submission will be made to the Police Advisory Board for approval.  A submission will then be submitted to Ministers for approval of the regulations  NPIA develop training packages for forces.
Spring 2008	Likely implementation of primary legislation required.
Spring 2008	Laying of regulations before Parliament.
Summer 2008	Implementation of new system.

## 7. Contact Point

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**List of stakeholders consulted**

Chief Officers  
Heads of HR  
Association of Chief Police Officers  
Association of Police Authorities  
Association of Police Lawyers  
British Association of Women in Policing  
British Transport Police  
Centrex  
Chair of Police Authorities  
Chief Police Officers' Staff Association  
Commission for Racial Equality  
Disability Rights Commission  
Equal Opportunities Council  
Gay Police Association  
Her Majesty's Inspectorate of Constabulary  
Independent Police Complaints Commission  
Ministry of Defence Police  
National Black Police Association  
National Disabled Police Association  
Police Superintendents Association  
Police Federation  
Police Staff Council (Trade Union side)  
Serious Organised Crime Agency  
Special Constabulary (policy contacts)  
Skills for Justice

## Initial Public Sector RIA

### **1. Policy title**

#### **Revised Unsatisfactory Performance Procedures for police officers**

### **2. Purpose and Intended effect**

2.1 The purpose of the proposed Police Performance Regulations is to put into place the revised policy on dealing with unsatisfactory performance and attendance (UPP) in the police force. The policy was revised by the Police Advisory Board Disciplinary Working Party in the light of recommendations by the 2005 Taylor Report.

2.2 Whilst the focus of that report was primarily on the existing code of standards and misconduct procedures, the report also recommended that a review of the UPPs take place – recognising that the procedures were not improving the performance of under-performing officers and are not a suitable tool for dealing with serious cases of unsatisfactory performance.

2.3 The previous procedures were not used widely by forces in dealing with under-performance or attendance issues – in part because the existing procedures were seen as bureaucratic, lengthy and cumbersome.

2.4 The new procedures thus aim to address these deficiencies by:

- replacing the existing procedures to provide a fair, open, proportionate and timely method of dealing with performance issues;
- encouraging a culture of learning and development for individuals and the organisation; and,
- encouraging line managers to make use of the procedures to improve both individual and, by extension, force performance and service delivery.

2.5 The previous procedures were not used widely by forces in dealing with under-performance or attendance issues – in part because the existing procedures were seen as bureaucratic, lengthy and cumbersome. These revised procedures are also designed to address these problems.

2.6 The new procedures are, as much as possible, based on ACAS principles. However, there are some differences to normal employment law practice as police officers are not employees as such – as they hold the “office of constable” as crown servants. The reason for basing the procedure on ACAS principles is to modernise the system – making it easier for individuals and the Police Service generally to learn lessons and improve the service received by the public.

### **3. Options**

#### Option 1 – Do nothing

3.1 The current system has been in place since 1999 –as set out in the Police (Efficiency) Regulations – but has not been used. The reason for this is that the procedures were considered lengthy, complex and bureaucratic. It is therefore considered that continuing with the existing system is not an option – as it is the system itself which is the barrier to use and thus dealing effectively with under-performance and poor attendance.

#### Option 2 – Revise current procedures

3.2 It is intended that the new procedures, which will be based on ACAS principles, should modernise the Police Service and Unsatisfactory Performance Procedure arrangements. The Police Advisory Board working party has developed and proposed revised UPP procedures.

3.3 The revised procedures, having been developed in consultation with key stakeholders, including the Police Federation of England and Wales, the Police Superintendents' Association of England and Wales, Independent Police Complaints Commission and others, make the process for dealing with unsatisfactory performance and attendance less judicial, lengthy, confrontational and bureaucratic.

3.4 The procedures have been drawn up in parallel with the new code of conduct and the revised procedures dealing with police officer misconduct.

3.5 In terms of implementation, as with the existing procedures, any person with supervisory responsibility for a police officer will use them where appropriate. From the responses to the 2006 consultation, particularly those from Human Resource departments, it was clear that the new procedures represent a significant improvement on the existing procedures - and it was agreed that they would, in practice, be fairer, more efficient and more supportive a human resource tool.

3.6 The consultation, which included groups such as the National Black Police Association, British Association of Women Police officers and the Gay Police Association, did not identify any potential problems which may disadvantage one group over another.

### **4. Costs and Benefits**

#### Benefits

4.1 The benefits of adopting the new procedures are already listed set out above (purpose and intended effect).

## Costs

4.2 There are no direct cost implications for the Home Department. There will, however, be some initial training implementation costs which will be met by the police training provider, Centrex (NPIA as of 1<sup>st</sup> April 2007).

4.3 As regards costs in the context of the 43 Home Office police forces, this is difficult to quantify as no detailed research has been undertaken into the existing system. This is partly to do with the fact that they were little used by forces. However, what is clear from consultation responses is that there are likely to be two main cost savings:

- Improving the **efficiency** of police officers – thus improving value for money and quality of output;
- Reducing the number of police officers taken through the **misconduct proceedings**<sup>45</sup> which are long and resource intensive given investigation and meeting requirements.

## **5. Monitoring and evaluation**

5.1 Discussions are on-going regarding the development of a performance framework, involving all key stakeholders, to monitor the control and effectiveness of the new procedures.

## **6. Implementation and delivery plan**

March 2007	The new regulations were circulated for statutory consultation
July 2007	A submission will be made to the Police Advisory Board for approval.  A submission will then be submitted to Ministers for approval of the regulations  Centrex training packages to be sent to forces.
Spring 2008	Likely implementation of primary legislation required.
Spring 2008	Laying of regulations before Parliament.
Spring 2008	Implementation of new system.

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<sup>45</sup> The existing misconduct procedures, which have been revised in parallel with the UPP procedures, included an initiation trigger based on failing to perform duties. With the revision of both of the procedures it is likely that such cases will now go through the UPP procedures.



## **7. Contact Point**

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**List of stakeholders consulted**

Chief Officers  
Heads of HR  
Association of Chief Police Officers  
Association of Police Authorities  
Association of Police Lawyers  
British Association of Women in Policing  
British Transport Police  
Centrex  
Chair of Police Authorities  
Chief Police Officers' Staff Association  
Commission for Racial Equality  
Disability Rights Commission  
Equal Opportunities Council  
Gay Police Association  
Her Majesty's Inspectorate of Constabulary  
Independent Police Complaints Commission  
Ministry of Defence Police  
National Black Police Association  
National Disabled Police Association  
Police Superintendents Association  
Police Federation  
Police Staff Council (Trade Union side)  
Serious Organised Crime Agency  
Special Constabulary (policy contacts)  
Skills for Justice  
A:gender

## **REGULATORY IMPACT ASSESSMENT: SPECIAL IMMIGRATION STATUS**

### **1. THE PROPOSAL**

To include a provision in the new Criminal Justice Bill creating a new immigration status which does not constitute to leave to enter or remain for persons who do not have the right of abode in the United Kingdom. The new status will apply to individuals who would normally be deported but who cannot be removed for ECHR reasons and will mean they do not acquire the benefits of immigration leave on the same basis as law-abiding migrants. This is part of the Government's strategy to ensure and enforce compliance with the immigration laws of the United Kingdom.

### **2. PURPOSE AND INTENDED EFFECT**

#### **(i) Objective**

The proposed new status will make it possible to deny leave to enter or remain to those foreign nationals whose conduct means they are excluded from international protection, but who cannot be removed due to ECHR barriers. It will apply to foreign nationals who are excluded from the protection of the Refugee Convention under Article 1F (i.e. those who have committed war crimes, crimes against peace or crimes against humanity; those who have committed serious non-political crimes prior to arrival in the UK; or those who are guilty of acts, such as terrorism, that are contrary to the purposes and principles of the UN), regardless of whether they have applied for asylum; and to those non-refugees who are guilty of serious criminality in or outside this country and who pose a danger to the community (see 4b below for crimes that fall within the special immigration status). The new status will not apply to persons exercising Community Treaty rights and to their third country family members. It will also not apply to recognised refugees.

The provision will allow reporting and residency conditions, and will mean they are denied access to employment and to most mainstream benefits. Instead, those who are destitute will be supported by the Border and Immigration Agency.

The purpose of the proposal is to send a clear signal that foreign criminals and terrorists cannot expect to secure a settled status in this country. The reporting and residency conditions, by ensuring contact management with the Border and Immigration Agency, will facilitate the eventual removal of these people from the United Kingdom.

#### **(ii) Background**

The issue was highlighted by the Court of Appeal judgment handed down in August 2006 in the case of S and others vs Secretary of State for the Home Department (often referred to as the Afghan hijackers judgment). The Court held that the current legislation did not allow an individual to be kept on

Temporary Admission once they had established that their removal would breach the ECHR. The Government does not believe that it is right that foreign nationals who are guilty of crimes that exclude them from international protection or of serious criminality such that they pose a danger to the community but whose removal is prevented by human rights considerations should receive leave to enter or remain, and therefore access to employment and mainstream benefits, on the same basis as law-abiding migrants.

Under the current legislative framework, as laid out in the Immigration Act 1971, individuals either have the right of abode in the United Kingdom or a right of admission under the Treaty of Europe, or they require leave to enter or remain. The proposal will create an alternative and less favourable immigration status short of leave under the Immigration Acts for certain people who cannot be removed.

### (iii) Risk assessment

This is addressing the risk that individuals who have committed serious crimes will become settled in the United Kingdom. Currently those who would be affected by this provision are granted short periods of leave (Discretionary Leave (DL)), generally for 6 months at a time, after which they have to apply for further leave. DL allows them to access employment and mainstream benefits, increasing their links with the UK and making their eventual removal more problematic. Legislation is required to take the power to deny them leave. Local management information suggests that the policy will affect fewer than 50 people at first, although it is possible that the number will rise over time depending on the difficulty of overcoming the legal barriers to their removal.

## 3. CONSULTATION

All the relevant directorates within the Border and Immigration Agency, including Asylum Policy, Special Cases Unit, Asylum Resources Directorate, Criminal Casework Directorate and Enforcement and Removals Directorate have been involved in discussion of the new provision. The Home Office's Legal Adviser's Branch has also been involved throughout the development of the proposal. Outside the Home Office, other government departments affected by the proposals have been widely consulted, as listed in the Annex, as have the devolved administrations.

## 4. OPTIONS

### a) Not legislating at all

“Doing nothing” was not an option in this case. Following the Court of Appeal's judgment in the case of the Afghans, Ministers undertook to legislate to ensure that the most serious criminals and others excluded from international protection by the terms of the Refugee Convention do not receive leave under the Immigration Acts simply by virtue of their current irremovability. This requires new powers in primary legislation.

## b) Legislating to apply the new status to all foreign criminals

One option considered and discounted when developing the policy was that the new status should apply to any foreign national who has committed a crime, irrespective of the seriousness of the offence. However, it was concluded that the austere nature of the regime, including denial of the right to work, would be a disproportionate response to minor offences. Placing large numbers of people on the new status would also potentially have had cost implications for the Border and Immigration Agency, which would have to provide support to those who were destitute. These other criminals (whom we would nonetheless wish to deport) will be granted DL if they cannot be removed probably subject to with reporting and / or residency conditions under the new power included in the UK Borders Bill. It was not an option to apply leave with those conditions to those to whom the new status will apply as this would not give effect to the policy intent that such people should be denied leave.

## c) Legislating to create a new status as an alternative to leave for persons excluded from the protection of the Refugee Convention and to particularly serious criminals

This option would ensure that the new status is available for use in cases involving the more serious criminals and those who threaten national security. These people would normally be deported. The new status will therefore be limited to those who cannot be removed from the country because of legal barriers. This is the option which best meets the objective of the policy, to enforce compliance with the immigration laws. It will ensure that serious criminals should not receive leave under the Immigration Acts for which they do not qualify merely as a result of their irremovability. The conditions associated with the new status, such as the denial of the right to work and to receive mainstream benefits, are such that it is appropriate to apply it only to those people whose presence in the country is not conducive to the public good or threatens national security.

## 5. COSTS AND BENEFITS

### Sectors and groups affected

#### *a) Impact on Business*

This provision is unlikely to have much impact on businesses because of the small numbers involved. Those given the new status will be subject to a condition which is likely to mean they are not able to take employment, so any individuals currently employed will cease to be eligible when the new status is imposed. However, it is likely that many in the category to whom the status will be apply will either already have been subject to a condition which prohibited them from taking employment or will have been unable to secure employment because of their association with criminality. Employers will be committing an offence under section 21 of the Immigration, Nationality and

Asylum Act 2006 if they knowingly employ someone who has the new status, and would also be liable to a financial penalty under section 15 of that Act.

The companies that provide accommodation for asylum seekers will have a small amount of new business as a result of the associated support regime. This will initially amount, at most, to the provision of accommodation for 50 more families (compared with the number of people, 4,151, supported under Section 95 of the Immigration and Asylum Act 1999 in March 2007). Thus, the impact will be negligible.

The impact of the new status will be felt by the individuals concerned, rather than businesses and employers, and by the Home Office insofar as support will be provided by the Border and Immigration Agency rather than through mainstream benefits.

*b) Impact on Non-Governmental Organisations which offer support and advice to asylum seekers / refugees*

Foreign nationals placed on the new status may approach NGOs for advice on what the status and its attendant conditions means for them in practice. The impact can be minimised if the Border and Immigration Agency carefully explains the provision to NGOs during implementation and, once implemented, informs those given the new status what they can and cannot do in simple terms.

Costs

Costs to the Border and Immigration Agency will be limited because of the relatively small number of people projected to be placed on the new status (fewer than 50 initially). The only significant cost to be met will be that of supporting those who are destitute. This will be met from the existing budget for support under the Immigration and Asylum Act 1999; the numbers with the new status will be negligible compared with the numbers of asylum seekers who are supported. (By way of comparison, at the end of March 2007 there were 47,151 asylum seekers supported under Section 95 of the 1999 Act.)

It is difficult to determine the support cost to the Border and Immigration Agency in the absence of data which would make it possible to calculate how many of those given the new status are likely to be destitute or information about their family situation. However, if the assumed maximum number of people likely to be given the new status (50) were all destitute and all had with an average-sized family of 3.3 people (the average size of asylum-seeking families supported) and sought accommodation-and-subsistence support, the cost of support would be £1,100,000. If the take-up of support were analogous to the take up rate for asylum support, the cost to the Border and Immigration Agency would be under £600,000 (still assuming that all those requiring support had families). This compares with an approximate total cost of supporting asylum seekers under Section 95 of the Immigration and Asylum Act 1999 for the financial year 2006/07 of £270 million.

## Benefits

The cost outlined above will in the main merely be transferred from local authorities and the Department of Work and Pensions, since mainstream housing provision and benefits will no longer be available to those who are supported by the Border and Immigration Agency. Consequently, the overall cost to the Government will be significantly lower than the impact upon the Border and Immigration Agency. The level of subsistence support to be paid by the Border and Immigration Agency will be set at 70% of the DWP Income Support rates for adults, and 100% for children. The savings that would be made here are offset by the fact that the cost of providing accommodation support is slightly higher than the average value of a passported housing benefit award. Thus, the cost of providing Income Support and Housing Benefit to an average-sized family is approximately the same as the cost of the Border and Immigration Agency providing accommodation-and-subsistence support.

The benefits which drive the policy are not the financial considerations concerning the cost of support. The policy will be broadly cost-neutral for the government. However, it supports the commitment set out in the IND Review (*Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system* (Home Office July 2006)) of ensuring and enforcing compliance with the United Kingdom's immigration rules. It will contribute to the overall aim of a system for managing immigration and the borders that is fair, effective, transparent and trusted, by denying the privileges of leave to those who are excluded from international protection or have committed particularly serious crimes, and who would be removed from the UK if this were possible.

## Small Firms Impact Test

The expected impact on small businesses is negligible. This is partly because of the very small number of people to whom it is envisaged it will be applied, initially no more than 50. It will mainly affect the method of support provided by the government, which is not something that will have an impact on any business sectors.

## Competition assessment

The competition impact of the proposals will also be insignificant. The overall proposal to deny leave under the Immigration Acts to certain categories of person will not have any competition impact. The impact of supporting at most 50 more families than are currently supported by the Border and Immigration Agency will be negligible, and there will be no new competition effect. The option of doing nothing would, of course, have no impact at all.

## Equality and Fairness

The new provision will not distinguish between nationalities, except that British citizens, and persons exercising Community Treaty Rights (and their family members) will be excluded. This is because this is an immigration provision,

and British citizens are not subject to immigration control (in the case of the former) and because of the high public security threshold applicable under European law (in the case of the latter). Recognised refugees do not fall within its scope because of certain rights to which all refugees are entitled in the Refugee Convention. However, with those exceptions, the provision could, in principle, be applied to any other foreign national who meets the criteria.

In practice, it is likely to have a greater impact on certain nationalities, specifically those from countries where a risk of treatment contrary to the ECHR may occur on their return. However, this difference is purely a result of different conditions in different countries, which is something which is likely to change over time; the policy will be applied equally to all nationals other than those who are excepted (see previous paragraph). Moreover, it will only have an impact on those who have engaged in criminality or acts contrary to the purposes and principles of the UN. Thus, any difference in treatment of different nationalities would be proportionate and would be justified by the twin objectives of maintaining effective immigration control and protecting the public. Those affected will be so principally as a result of their own actions.

## 6. ENFORCEMENT, SANCTIONS AND MONITORING

There will be sanctions for non-compliance with the conditions attached to the new status. These will mirror section 24 of the Immigration Act 1971 which applies to non-compliance for those granted limited leave or temporary admission (currently a custodial sentence of up to six months and/or a fine of up to £ 5,000, but due to increase to imprisonment for a period not exceeding 51 weeks and/or a fine of up to £5,000).

Once the provision comes into force, the Border and Immigration Agency will maintain records of the number of foreign nationals granted the new status. These records will be analysed periodically, twice annually in the first instance. The proportion of those granted the new status who are subsequently removed will be of particular interest. These monitoring arrangements will also allow the impact of the policy on people of different nationalities or religious beliefs to be assessed to ensure that it is justifiable on the grounds of needing to protect the public and uphold effective immigration control.

### **Declaration**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Liam Byrne MP**  
**Minister of State**  
**Home Office**  
**June 2007**



### Annex: Other Government Departments consulted

The following government departments have been consulted in the development of the proposals for the new status:

- Ministry of Justice
- DCLG
- Department of Health
- Department for Work and Pensions
- HM Revenue and Customs
- Department for Education and Skills

## **PARTIAL REGULATORY IMPACT ASSESSMENT**

### **VIOLENT OFFENDER ORDERS**

#### **PARTIAL REGULATORY IMPACT ASSESSMENT**

##### **1. Title of proposal**

1.1 Introduction of Violent Offender Orders

##### **2. Purpose and intended effect**

###### **(a) Objective**

2.1 To better manage the risk posed by those who have been convicted of serious violent offences, by enabling courts to impose conditions on them (eg prohibiting contact with previous victims, or prohibiting entry into specified areas) by means of a civil order.

###### **(b) Background**

2.2 On 20 April 2006, former Home Secretary Charles Clarke announced in Parliament a package of measures to enhance public protection. These included the introduction of Violent Offender Orders. Violent Offender Orders were subsequently included in the Criminal Justice System (CJS) Review, which was published by the Home Office in July 2006, and were the subject of an informal stakeholder consultation which ran in April 2007. A Government response to the consultation has since been published.

2.3 Currently all offenders serving 12 months or greater with a conviction or caution for a specified sexual or violent offence are subject to Multiple Agency Public Protection Arrangements (MAPPA), a statutory set of arrangements under which police and the Prison and Probation Services (the “responsible authorities”), and other agencies with a relevant interest in the case, must work in partnership to share information and manage high-risk offenders. In general, when an offender comes to the end of their sentence or post-release licence they will no longer fall under the MAPPA provisions. The exception is in cases where a Sexual Offences Prevention Order (SOPO) has been awarded, because the MAPPA then has a duty to manage the risk throughout the duration of the order. With respect to violent offenders, even those which the Probation Service or any other agency remain concerned about, there is currently no statutory mechanism for continued monitoring or restriction once an offender has come to the end of their sentence.

2.4 The Home Office feels that there should be some mechanism in place to allow for continued monitoring and control of the behaviour of high risk violent offenders who are not subject to any other measures to manage their risk, in order to better protect the public. Violent Offender Orders have been designed to provide this.

(c) Rationale for government intervention

2.5 The CJS Review 2006, 'Rebalancing the criminal justice system in favour of the law-abiding majority', states that the Home Office will "put more focus on serious crime and protect the public from dangerous and violent offenders" through a range of measures which include the introduction of Violent Offender Orders.

2.6 A Violent Offender Order will allow restrictions to be placed on an individual who is still considered to present a high risk of serious harm to the public at the end of their sentence. They would be subject to certain conditions deemed necessary to reduce or manage that risk. This should ensure that the public are more effectively and continuously protected from violent offenders who pose a high risk of serious harm.

2.7 Taking no action to better manage violent individuals would do nothing to decrease the likelihood of serious and high-profile further offences being committed.

### **3. Consultation**

3.1 The proposal to introduce Violent Offender Orders was included in the CJS Review, published in July 2006. Comments were invited on all proposals included in this document via a dedicated email address, and consultation events involving Ministers took place in January 2007.

3.2 In terms of the specific policy details around Violent Offender Orders, we have developed proposals as to the target group for these orders and the process by which they would be given and managed. In April 2007 we carried out an informal consultation with key stakeholders, both internal and external to the Home Office, and received a large number of responses. A Government response to the consultation has now been published, and in the light of the consultation responses we have made some changes to the detail of the proposed policy.

### **4. Options**

(a) Option 1 - Introduce Violent Offender Orders

4.1 This will ensure that violent offenders who pose a significant risk to the public following the end of their sentence are continuously managed for as long as they pose a significant risk.

(b) Option 2 - Continue with current arrangements.

4.2 As outlined above, Ministers have already made a public commitment to introduce Violent Offender Orders as part of a wider effort to protect the public from dangerous and violent offenders. Taking no action to better manage violent individuals will not enhance public protection, nor decrease the likelihood of serious re-offending.

## **5. Benefits**

5.1 The introduction of Violent Offender Orders would better protect the public from dangerous and violent offenders by ensuring they continue to be subject to conditions designed to manage or reduce risk, after the end of their sentence.

5.2 Violent Offender Orders will be a preventative measure, and we anticipate that their introduction would prevent some serious violent offences being committed. As well as preventing people becoming victims of serious violence, this would bring savings across the Criminal Justice System in terms of investigating offences, trials, prison places and offender management. It would also bring potential savings for other public services such as health and social services.

## **6. Costs**

6.1 There will be some costs attached to the introduction of Violent Offender Orders. We anticipate that when the Orders are first introduced there will be a slow take-up, which will increase over time as practitioners become more familiar with the orders and the processes bed in. We also expect that the orders will initially be more costly to obtain, but that as procedures become standardised and streamlined with experience, the costs will reduce over time.

6.2 At present we envisage that Violent Offender Orders will be sought only in respect of those MAPPA cases where a qualifying offender is about to conclude his licence period, and there are significant concerns that he will still present a high risk of serious violent harm to the public. Taking into account the number of individuals who had committed a qualifying offence, and who posed a high enough risk to require the highest degree of management by multiple agencies in 2005/6<sup>46</sup>, we estimate that the number of Violent Offender Orders made each year will be 83 to 125. Based on the proportion of offenders who currently breach their licence, and the proportion of subjects of Sexual Offences Prevention Orders who breach their Order, we can assume that the number of breaches of Violent Offender Orders will be 17 to 23 each year.

6.3 On the basis of each breach resulting in a two and a half year prison sentence of which one and a quarter years will be served, at a cost of £35,000 per individual per year, we can estimate an annual requirement for 17 to 23 prison places at a cost of £595,000 to £805,000. This will need to be offset by measures to rebalance the prison population to free up the capacity needed.

6.4 Based on the costs of managing MAPPA Level 3 offenders and obtaining SOPOs, we estimate that the total annual costs to the police, nationally, will be approximately £725,000. This estimate is made with the qualification that the actual costs are likely to vary widely between cases and

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<sup>46</sup> See 2005/6 MAPPA report

between police forces, and will depend on the type and degree of risk-management required in each case, the operational decisions taken in each force on how to manage the Orders, and the capacity of each force to implement VOOs. ACPO has said that costs may be higher in forces which currently lack capacity in public protection. The Criminal Justice and Immigration Bill, the legislative vehicle through which Violent Offender Orders have been introduced, contains measures which will generate net savings for police authorities. As such there will be no need for Government to provide additional funding to police authorities to meet the costs arising from Violent Offender Orders.

6.5 Court costs over the first three years are estimated at approximately £218,000, legal aid costs at approximately £860,000 and CPS costs at approximately £200,000. These will be covered by the Home Office.

	<b>Court</b>	<b>Legal Aid</b>	<b>CPS</b>	<b>NOMS</b>	<b>Total</b>
1 <sup>st</sup> year (2009/10)	£57,006	£228,297	£53,128	595,000	£933,431
2 <sup>nd</sup> year (2010/11)	£69,022	£279,973	£64,098	665,000	£1,078,093
3 <sup>rd</sup> year (2011/12)	£92,332	£349,323	£79,526	805,000	£1,326,190
<b>Total 3 years</b>	<b>£218,360</b>	<b>£857,593</b>	<b>£196,752</b>	<b>£2,065,000</b>	<b>£3,337,714</b>

## 7. Other assessments

### (a) Equality Impact Assessment

7.1 A full Equality Impact Assessment (EIA) has been conducted on this policy. In terms of the profile of a violent offender, we know that white males between the ages of 10-25 are most likely to commit offences of violence. The next highest category is black males within the same age group. In terms of those committing serious offences (not necessarily just violence), the highest category of offenders is males of mixed ethnicity between the ages of 26-65, followed by white males between the ages of 10-25. Women are less likely to commit violent or serious offences, but among the female population women of mixed ethnicity between the ages of 10-25 are most likely to commit both.<sup>47</sup> The differences between the groupings of offenders are not sufficiently high as to lead us to conclude that the introduction of Violent Offender Orders will have a significantly adverse impact on any one group.

7.2 In terms of the likelihood of being a victim of violent crime, we know that young men between the ages of 16-24 are most at risk, as are the unemployed and people living in deprived areas. Non-whites are marginally more likely to be victims of violent crime than white people<sup>48</sup>.

<sup>47</sup> Minority Ethnic Groups and Crime: findings from the Offending, Crime and Justice Survey 2003 - Clare Sharp and Tracey Budd

<sup>48</sup> Violent Crime Overview, Homicide and Gun Crime 2004/5 - Kathryn Coleman, Celia Hird and David Povey; Crime in England and Wales 2005/6 - Alison Walker, Chris Kershaw and Sian Nicholas

7.3 We have consulted on the equality impact of Violent Offender Orders as part of the full consultation. Those consulted included the Runnymede Trust, the Campaign for Racial Equality, the Disability Rights Commission, the Commission for Equality and Human Rights, as well as civil rights organisations such as Justice and Liberty, and senior representatives of the Criminal Justice System and the voluntary sector.

7.4 Some respondents felt that Violent Offender Orders could have a disproportionate impact on BME communities, because black people are more likely to be assessed as high risk and therefore to be over-represented within the population of offenders these Orders are aimed at. Many respondents also expressed a concern that young adults might be over-represented. However there were a number of respondents who felt that there could be potential benefits to this policy in terms of equality impact. They suggested that minority, oppressed and vulnerable groups could benefit because the Orders would be a useful tool in tackling crimes in respect of which these groups are over-represented as victims, such as domestic violence and hate crime.

(b) Other assessments

7.5 This policy has no known rural proofing, environmental or health impact. Nor do we believe that it will have any significant impact on business.

## **8. Monitoring and evaluation**

8.1 This policy will be monitored by the Home Office Violent Crime Unit, primarily in terms of re-offending rates among those who are given Violent Offender Orders. An evaluation process will be established in the course of planning for implementation of the policy once legislation is passed.

## **9. Summary and recommendation**

9.1 The Government proposes to proceed with Option 1. In arriving at this decision and in developing our policy for Violent Offender Orders we have been guided by the consultation responses in terms of the specific details of the policy and the process by which they would be given and managed.

**10. Declaration**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Signed** .....

Rt Hon Tony McNulty MP  
Minister of State for Security, Counter-terrorism, Crime and Policing.  
September 2007

## Summary: Intervention & Options

<b>Department /Agency:</b> Ministry of Justice	<b>Title:</b> Impact Assessment of new offences of stirring up hatred against persons on the ground of their sexual orientation.	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> December 2007
<b>Related Publications:</b>		

Available to view or download at:

<http://www.justice.gov.uk/publications/criminal-justice-bill.htm>

**Contact for enquiries:** Diana Symonds/Louise Douglas

**Telephone:** 020 7035 6989/6958

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

What are the policy objectives and the intended effects?

What policy options have been considered? Please justify any preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*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:

MARIA EAGLE MP, Parliamentary Under Secretary of State ..... **Date:** December 2007



## Summary: Analysis & Evidence

<b>Policy Option: 3</b>	<b>Description: To extend existing incitement to hatred offences</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' Public Sector – Police, Crown Prosecution Service, Courts and Prisons; Private Sector – multi-media broadcasters. Average annual cost is calculated on the basis of an estimated one case per year, leading to a Crown Court trial, conviction and imprisonment. A case prosecuted in a Magistrates' Court or which results in other outcomes will cost less.
	<b>One-off</b> (Transition) <b>Yrs</b>	
	£ <b>N/A</b>	
	<b>Average Annual Cost</b> (excluding one-off)	
	£ <b>49,854</b>	<b>Total Cost (PV)</b> £ <b>429,128</b>
Other <b>key non-monetised costs</b> by 'main affected groups'		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b> <b>Yrs</b>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
	£	<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups'		
Greater protection afforded to victims of hate crimes targeted because of their sexuality.		

**Key Assumptions/Sensitivities/Risks:** Faith based organisations, individuals such as comedians and multi media broadcasters already abide by existing laws on incitement to racial and religious hatred.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	To be confirmed.
Which organisation(s) will enforce the policy?	Police/CPS
What is the total annual cost of enforcement for these organisations?	£15,000 maximum
Does enforcement comply with Hampton principles?	No
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro      Small      Medium      Large
Are any of these organisations exempt?	No      No      N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£	<b>Net</b> £

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

**Background:** Victims targeted because of their sexual orientation do not have the same special protection under the law to which victims of racial or religious hatred have access.

The Government believes that victims of these types of crimes should be protected in a similar way to those who are victims because of their race or religion. This will complement existing offences and sentencing provisions, which aim to protect people and groups who may be deliberately targeted by those with extremist beliefs.

**Risk Assessment and drivers for action:** The Government has a responsibility to address the risk posed to citizens by groups and individuals with extremist views and the ongoing impacts that this can have on community cohesion. The Government is referring to groups and individuals who believe that because they disapprove of the sexual orientation of others, it is acceptable to incite others to hate or even physically attack them.

The new offences will, the Government believes, address this risk by sending a clear signal that activities which stir up hatred on grounds of sexual orientation are no more acceptable than activities which stir up hatred based on race or religion.

The Government does not intend, nor does it expect, the proposed offences to prevent free speech or interfere with the right of citizens to disagree with others' lifestyle. Similar issues were raised and considered when the offences of stirring up religious hatred offence were introduced.

When considering whether to prosecute for stirring up hatred the Crown Prosecution Service must bear in mind, amongst other things, the right of everyone in this country to express views or behave in ways that others might find offensive but do not threaten public order.

For incitement to racial hatred, cases must meet a two-part test. To fall foul of these offences the offending party must not only use words or behaviour or publish or distribute material that is threatening, abusive or insulting but must also intend or be likely to stir up hatred by doing so.

It is hatred rather than just hostility that must be intended or likely to have been stirred up. Additional safeguards to freedom of speech are that a person who is not shown to have intended to stir up racial hatred is not guilty of this offence if he did not intend his words or behaviour or the written material to be, and was not aware that it might be, threatening, abusive or insulting. The offences do not apply to actions inside one's home.

The Racial and Religious Hatred Act 2006 amended the Public Order Act 1986 to introduce offences of stirring up religious hatred. There was considerable debate during the passage of the Act about the issue of freedom of speech, and whether restrictions on the freedom were justified. There were concerns about where the threshold was beyond which behaviour or material would become illegal. As a result the legislation was amended during its passage to make particular allowances for freedom of speech in relation to religious hatred. The offences were also amended so that only 'intending to cause hatred' was an offence, rather than behaviour or material intending or likely to cause hatred or be abusive or insulting.

Prosecutions brought under existing incitement to hatred legislation can be heard in either a magistrates or crown court. Every case is referred to the Crown Prosecution Service for assessment and cases can only be prosecuted with the consent of the Attorney General which prevents unwarranted legal action and associated costs. This will also be the position for prosecutions brought under the proposed new law.

Historically, there have been a limited number of prosecutions for stirring up racial hatred, on average about four a year. The Government does not expect the proposed extension of the law to cover hatred on grounds of sexual orientation to result in a significant increase in the number of cases brought. However, the prosecution of those cases that meet the criminal threshold is important as the offences have a disproportionate impact on the communities in which they occur. And the effect of the legislation cannot be measured solely in terms of prosecutions. For example, the advice found on a number of websites, urging those who use them to ensure that their remarks remain within the law, suggests that the offences of stirring up racial hatred have had a deterrent effect. The same should be true of the new offences of incitement to hatred. This will have a beneficial effect on society as a whole by deterring unacceptable behaviour and promoting greater tolerance within communities.

## **Consultation**

- **Within government**

The following departments have been involved in the development of this proposal:

Home Office

Northern Ireland Office

Department for Work and Pensions

Department for Communities and Local Government

Crown Prosecution Service

Office for Criminal Justice Reform

- **Public consultation**

We have not carried out any formal written public consultation on the proposed new offences, nor is such an exercise intended. However, Ministers have discussed the Government's proposals with representatives of all the key stakeholder groups and have written to religious leaders of all the main faiths and the Chair of the Equality and Human Rights Commission. Ministry of Justice officials have also written to a large number of other stakeholders with an interest in this area, including civil liberties groups and the religious organisations that responded to the *Getting Equal* Consultation on Sexual Orientation Regulations.

In addition, organisations have had the opportunity to write to the Committee scrutinising the legislation and the issue has been discussed in oral evidence sessions on the Bill with Ministers and witnesses. The Government has received representations made by Stonewall, the leading gay rights lobby organisation, who have provided evidence of violently homophobic song lyrics and pamphlets circulated by extreme political and religious groups as current examples where additional protection would be helpful.

### **Affected Groups:**

The proposal outlined here is likely to affect the following groups:

The homosexual community;

Business and third sector groups publishing material in a variety of ways (electronic, paper and other media).

### **Options considered for action:**

#### **1. Do nothing:**

The Government has taken steps to protect groups targeted because of specific factors such as race and religion and believes it is justified in extending the protection to those who are targeted because of their sexual orientation. Stirring up hatred against vulnerable groups carries risks of fostering a culture where violence against members of the groups is seen as acceptable.

Legislation to date, for example to equalise the age of consent for homosexual and heterosexual people, has helped change attitudes to some extent. But given the continuing violence and hatred against homosexuals the Government considers legislative action is needed and that doing nothing is not an acceptable option.

**Benefits:**

The Government does not believe that this will deliver any benefits.

**Costs:**

No likely savings or costs arise from this measure.

**2. Non-legislative measures**

The Government is committed to tackling unacceptable prejudice and extremism in other ways, for example through working with Crime and Disorder Reduction Partnerships and by allocating £250,000 into the Victims Fund to tackle hate crime and to provide support for victims of such crime. While such measures are important, the Government does not believe that these measures alone will prevent incitement to hatred, which may lead to hate crime, from happening in the first place.

**Benefits:**

Although there are some benefits for victims, this approach is unlikely to have the longer term impact of a legislative option.

**Costs:**

The ongoing costs for the support of these measures.

**3. To extend existing incitement to hatred offences**

This is the Government's preferred option. The Government believes it will deliver the clearest signal that violence and abuse against people of different sexual orientation is not acceptable and will deliver positive benefits for victims.

**Benefits:**

Option 3 should have a positive impact on those who are the target of hatred and hate crime because of their sexual orientation. Being on the receiving end of bigotry and hatred can have a devastating effect on victims. Increased legal protection will help them to feel that they can live their lives free from discrimination and harassment. It should also have a positive effect on relations between the police and the communities affected by boosting confidence and reassurance amongst these communities that the police will be able to deal effectively with stirring up hatred on grounds of sexuality as well as race and religion.

**Costs:**

**Public Sector**

Option 3 would have costs for criminal justice agencies. The most recent comparable offences of this type are those of stirring up religious hatred (in Part 3A of the Public Order Act 1986). However, these were only brought into force on 1 October 2007 so available data on prosecutions for incitement to hatred is confined to the offences of stirring up racial hatred (in Part 3 of the Public Order Act 1986).

The starting point for drafting offences of stirring up hatred on grounds of sexual orientation will be the religious hatred model under which, as explained above, the threshold for criminal behaviour is considerably higher than that for stirring up racial hatred.

There will be a cost to the police and the Crown Prosecution Service in considering cases even if they do not result in a prosecution. Both are already asked at present to consider whether material containing references to race or religion might constitute an offence under the existing

law. In the 12 months to July 2007 the Crown Prosecution Service considered 20 cases, 3 of which resulted in prosecutions for stirring up racial hatred. Earlier figures suggested that up to 30 cases of possible incitement to racial hatred are considered each year. However, not all cases considered will result in a prosecution and not all prosecutions will result in convictions. As of 31 August 2007, there had been 84 prosecutions for stirring up racial hatred over the past 20 years, 60 of which resulted in convictions. All of this suggests that annually an average of:

- 20-30 cases are considered;
- 4 are prosecuted; and
- 3 result in convictions.

The proposed extension of the law, and the publicity and increased confidence that this will bring, is likely to result in the police, the Crown Prosecution Service and other organisations being asked to consider more potential hate material than at present. Given the immediate publicity generated by the introduction of the new offence, any increase is likely to be most marked in the first few years. However, we would not expect more than 10 additional cases per year to be considered and, as the new offences are proposed to be on more restrictive lines, we estimate that the Crown Prosecution Service might prosecute one more case of stirring up hatred per year.

The cost to the Crown Prosecution Service of providing pre-charge advice is about £60 per case. The cost of prosecuting a case, assuming a 2/3 day trial, is £2,279 with an additional £1,400 for counsel fees or Higher Court Advocate (HCA) costs.

The average cost of a crown court trial (assuming a duration of 2 days and an average sitting day of 5 hours) would be around £9,200 but hearing time will vary depending on whether a defendant enters a guilty plea or a not guilty plea.

In addition, there may be costs for the criminal defence service if an offender were eligible for public funding to defend any criminal charge or appeal against a conviction. There are potentially four types of legal aid that could apply:

- **police station duty solicitor** - anyone questioned in connection with an alleged criminal offence is entitled to free advice, and this will apply to all suspects regardless of whether they are prosecuted. The average cost is £270 per suspect.
- **magistrates' court representation** - costs will depend on whether the defendant pleads guilty or goes to trial, and where he is dealt with.
- **Crime Higher representation including Crown Court** - again costs will vary.
- **Prison law** - this relates to representation before parole boards and disciplinary hearings. These usually involve prisoners serving long sentences and are unlikely to be relevant here.

On average, legal aid will cost a further £12,000 per case. Cases prosecuted in a Magistrates' court will cost legal aid £539 per case, more if any case goes to trial.

There would be a cost to the National Offender Management Service (NOMS) in the event of a convicted person receiving a custodial sentence. The average cost of one place in custody is £39,000 per year. Of those who received sentences of immediate imprisonment for stirring up racial hatred, the average sentence is 15 months of which at most half would be served in custody. So, assuming an average sentence for the new offence, the annual cost to NOMS would be £24,375. And costs could be lower if community sentences were imposed as an alternative to custody in specific instances.

In summary, the annual cost for the Crown Prosecution Service of considering 10 cases would be **£600**. And the annual cost of one case being prosecuted, assuming a 2-day Crown Court trial where the defendant is eligible for legal aid, is convicted and receives an average prison sentence, would be as follows:

Legal aid	£12,000
Trial	£9,200
Prosecution	£2,279
Counsel fees/HCA cost	£1,400
NOMS	£24,375
<b>Total</b>	<b>£49,254</b>

So the total annual cost, including the cost of considering 10 cases, would be **£49,854**. Set against this would be the benefits in terms of any reduction in crimes of violence against the homosexual community, which the new offence should help to discourage.

There are numerous sources of reference and guidance upon the criminal law. These are regularly and routinely updated. We envisage that it will be possible to incorporate this change as part of such an update without incurring significant additional cost. For example, in 2003 the Crown Prosecution Service produced a prosecution policy document that sets out in detail the way that it deals with cases of racist and faith-related crime, including incitement to racial hatred. The Police have similar operational documents. These documents would need revision in the light of the proposed extension to the law. The revisions required are not likely to be substantive.

#### **Private Sector:**

Business sectors most likely to be affected by the proposal are the broadcasting, entertainment and publishing industries. However, given the existing safeguards protecting free speech, and the fact that they are already obliged to comply with legislation prohibiting incitement to hatred on other grounds, the impact of the new offence should not be significant. Any material stirring up hatred is likely to be already unacceptable to broadcasters and publishers

#### **Compliance Costs**

The proposal should not involve any significant compliance costs for firms. Whatever measures are in place to ensure compliance with existing laws on stirring up racial and religious hatred should extend readily to stirring up hatred on other grounds.

#### **Costs for a typical business**

The sort of businesses that may be affected include broadcasting organisations, theatres and publishing firms of varying sizes. However, there are no indications that extending protection from incitement to hatred to homosexual people will result in any significant implementation costs. For example, a small business publishing a contentious document on behalf of an individual or organisation, or a theatre putting on a contentious play, should already consider whether or not the content incites racial or religious hatred and is unlikely to expend more resources in extending such consideration to hatred on grounds of sexual orientation.

#### **Sensitivity analysis**

The above figures are based on the assumption that prosecutions for the new offences of stirring up hatred on grounds of sexual orientation will be fewer than for stirring up racial hatred because the threshold for criminal behaviour will be higher. If, contrary to expectations, the number of cases considered and prosecutions were consistent with those for stirring up racial hatred (i.e. up to 30 cases considered and 4 prosecuted a year), then average annual costs would increase accordingly, i.e. £198,816.

But there are many variables: defendants may or may not be eligible for legal aid; the duration of a trial may be shorter or longer than average; prosecutions may or may not result in convictions; and convictions may or may not result in sentences of immediate imprisonment. Of the 60 convictions for stirring up racial hatred mentioned above, 39 resulted in sentences of immediate imprisonment; 7 in suspended sentences of imprisonment; 1 in a combined immediate/suspended sentence of imprisonment; 2 in community service orders; 1 in a probation order; 1 in an attendance centre order; 1 in a community rehabilitation order; 3 in fines and 5 in conditional discharges. Sentences of immediate imprisonment ranged from 3 months (in 2 cases) to 5 years (in 1 case). Although the average sentence was 15 months, the most common sentence (in 9 cases) was 6 months.

A 6-month sentence would reduce the annual cost of prosecuting one case to £34,629. A 5-year sentence would increase it to £122,379 but sentences as long as this for stirring up hatred are unusual.

### **Summary and recommendation**

We need where possible to take measures to protect targeted groups where there is evidence that they are under threat. We need to do so in a way that does not interfere with the legitimate rights of others. Accordingly, the Government believes that extending current legislation to make it a criminal offence to stir up hatred against people on grounds of their sexual orientation is appropriate and would in practice help to change attitudes and behaviour. We therefore recommend option 3.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No



### **Competition Assessment**

The markets affected by these proposals are the broadcasting, entertainment and publishing sectors. We do not know the precise market share of the firms involved but we do not believe that the introduction of a new offence would affect some firms substantially more than others. Nor would it be likely to affect the market structure or lead to higher set-up or ongoing costs for new or potential firms than for existing firms. To the extent that it involves publication on the internet, the relevant market sector is characterised by rapid technological change. But a new offence would not restrict the ability of firms to choose the price, quality, range or location of their products. Legislation will also need to implement the EC Directive on Electronic Commerce (2000/31/EC) in its application to the new offence. This will ensure the UK's obligations under that Directive are met in so far as the offence can be committed in the context of commercial services on the internet.

### **Small Firms Impact Test**

We do not expect that any of the options would have a significant impact on small business.