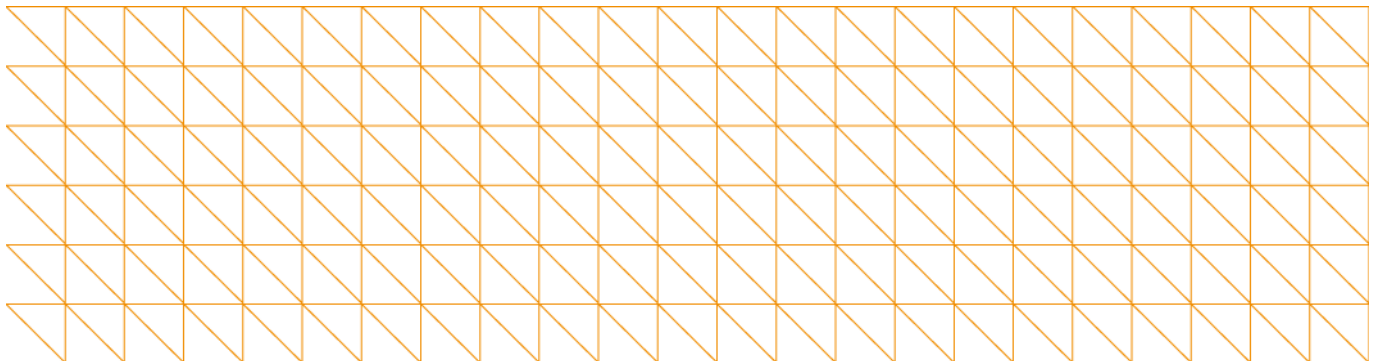




Ministry of
JUSTICE

Crown Court Means Testing Supplementary Impact Assessment

28 October 2009



HER MAJESTY'S
COURTS SERVICE
hmcs

legal services
COMMISSION

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment of Crown Court Means Testing	
Stage: Laying of Regulations	Version: 3	Date: 28 October 2009
Related Publications: Crown Court Means Testing Consultation Paper, Response to Consultation, Interim Impact Assessment and Response to Consultation on draft Regulations		

Available to view or download at:

<http://www.justice.gov.uk>

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

The introduction of a means test in the magistrates' court in October 2006 has delivered net savings to the Legal Aid fund of over £80 million to date. Extending the test to the Crown Court will enable the Government to help more vulnerable people within available legal aid resources. It also provides value for money for the taxpayer and reassures the public that wealthy convicted defendants are liable for their defence costs. It is therefore a natural next step – and has been a publicly stated Government objective since 2005 – to ensure that defendants in the Crown Court, who can afford to contribute towards their publicly funded defence costs, do so. We have estimated that the introduction of a new means test in the Crown Court will eventually deliver annual gross savings to the Legal Aid fund of approximately £50 million against a total Crown Court spend of £680 million.

What are the policy objectives and the intended effects?

To introduce a scheme for legal aid in the Crown Court, which fairly and accurately identifies those who can genuinely afford to pay some or all of their costs, and targets free legal representation at those who need it. We have estimated that the introduction of means testing will deliver eventual annual gross savings to the Legal Aid fund of approximately £50 million per year, and contribute significantly to the sustainability of the legal aid fund.

What policy options have been considered? Please justify any preferred option.

We considered a range of options and schemes, which were set out in our consultation paper and Interim Impact Assessment, along with an explanation as to why we decided not to pursue each option. We intend to introduce a new means testing scheme made up of monthly contributions from income during the pre-trial/trial phase of a Crown Court case. Further contributions from convicted defendants from capital would also be required if they possess capital assets above the threshold.

This Supplementary Impact Assessment describes in more detail the impact of the policy the Government has decided to implement on particular groups and categories of defendant. It takes into account the views expressed at provider events, held in August and September 2009, and the responses to the consultation exercise on the draft Regulations, which closed on 6 October 2009.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Detailed design of the administrative, operational and IT processes to support a new Crown Court means test is virtually complete. Regulations to support the introduction of means testing have been laid before Parliament, and will be the subject of debate in the coming weeks. The early adopter phase of the project will enable us to test business processes and monitor a range of issues (identified in more detail in this Impact Assessment). The actual costs and benefits of the scheme will be reviewed regularly during the course of, and following the completion of, a phased national roll out.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Includes annual payment of £4m to solicitors for assisting clients to submit the necessary evidence, annual ongoing HMCS costs of £2.5m, annual ongoing collection and enforcement costs of £4.9m and other annual ongoing costs of £2.1m.
	One-off (Transition)	Yrs	
	£ 12.2 million	1	
	Average Annual Cost (excluding one-off)		
	£ 13.5 million	2+	Total Cost (PV)
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The sums saved by the Legal Aid fund equate to the sums paid by defendants and are regarded as transfer payments rather than as economic benefits.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
			Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups' There is a technical economic welfare 'deadweight loss' associated with the fact that defendants are receiving part-subsidised legal advice. In effect this relates theoretically to defendants over-demanding legal advice. By reducing the extent of subsidisation these technical 'deadweight losses' are reduced.			

Key Assumptions/Sensitivities/Risks The Legal Aid fund expects to save average gross annual payments of approximately £52.4m by 2013/14. This is based on a sensitivity analysis which takes account of the current economic climate. Section 8 describes in more detail the modelling work undertaken, which incorporates various behavioural assumptions.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?	England & Wales			
On what date will the policy be implemented?	January 2010			
Which organisation(s) will enforce the policy?	MoJ, HMCS, LSC			
What is the total annual cost of enforcement for these organisations?	£13.5m			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
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

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase	£	Decrease	£	Net	£

Key: **Annual costs and benefits: Constant Prices** (Net) Present Value

The Director of Analytical Services in the Ministry of Justice has advised that this Impact Assessment represents a fair and reasonable view of the expected costs, benefits and impacts.

Ministerial Sign-off

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

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read "W. M. B. B. B.", with a horizontal line underneath it.

Date: 28 October 2009

SCOPE OF THIS IMPACT ASSESSMENT

This Supplementary Impact Assessment (IA) summarises the Government's response to the views of providers, professional bodies and others offered since the publication of the Interim IA in June 2009, and policy issues raised in the recent consultation exercise on the proposed Regulations. It deals in more detail with specific areas of concern and types of defendant, and it updates the forecasts of the costs and benefits of introducing a means testing scheme into the Crown Court. It also includes the Interim Equality Impact Assessment, which focuses on potential impacts on defined groups of people.

2. RATIONALE FOR INTERVENTION

2.1 The Government remains firmly committed to the principle that those defendants in criminal cases who can afford to pay some or all of their defence costs should do so, and is encouraged to see that support for this principle is shared by respondents to the recent consultation exercise. The sustainability of the Legal Aid fund is an important factor in the Government's decision to move forward with the means testing of defendants in the Crown Court.

2.2 Three years since the introduction of the scheme in the magistrates' court, means testing has been successfully embedded within the Criminal Justice System and is working effectively. Teams from the LSC, HMCS and MoJ have been developing the business and legislative structures needed to support the introduction of means testing in the Crown Court, and work is approaching completion. As a result, the Government reaffirms its commitment to extend means testing to Crown Court trials, committals for sentence and appeals. It has now laid the Regulations to support the scheme, which are published on the Ministry of Justice website.¹

2.3 The estimated costs and savings identified in this Impact Assessment are based on the most accurate data currently available. The Government has also published the methodology paper, which underpins the costs and savings, together with peer reviews prepared by three independent academics. These can be found at Annex C.

¹ www.justice.gov.uk

3. PUBLIC ASSURANCE

The Crown Court Means Testing scheme will have a positive impact. There will be a benefit in two ways: the public will be assured that offenders with sufficient means are liable to contribute to the costs of their own defence, rather than those costs having to be met by the taxpayer; and the taxpayer will see that convicted defendants are held financially as well as criminally accountable for their actions.

4. THE EVIDENCE BASE

4.1 In developing proposals for a new Crown Court Means Testing scheme, the Government has relied on a comprehensive statistical model, which has drawn together results from a wide range of survey material. The detail of that material is contained in the Interim Impact Assessment, published on 8 June 2009. Robust testing supports our earlier forecasts of the number of defendants who will be passported, qualify for free representation, and be liable for contributions. The modelling itself has been recession-proofed. Following the academic peer review, the modelling was revised to take into account suggestions to improve the model. The outputs from the revised model were very similar to the original model, and the revised modelling did not highlight any significant problems with the original model.

4.2 This research has improved our understanding of the social status, income and wealth of defendants that appear before the Crown Court. It has also enabled us to create a means testing scheme that only targets those defendants who can genuinely afford to contribute towards their case costs. The “early adopter” phase will enable us to test the assumptions we have made, and help us gather further information about the economic profile of defendants.

5. SUMMARY OF THE FINAL MEANS TESTING SCHEME FOR TRIALS IN THE CROWN COURT

5.1 Every defendant appearing before the Crown Court for trial will be granted a representation order, subject to the submission of a completed application form. Those defendants, the majority, who cannot afford to pay anything towards the costs of their publicly funded defence will continue to receive representation for free. Some, however, will be required to contribute

towards their defence costs during the course of their case, depending on their level of income. Others will be required to contribute towards their defence costs at the end of their case, because they possess capital assets beyond the threshold allowed. For some defendants, both types of contribution will be appropriate. Passported defendants will not be required to contribute towards their defence costs, from either income or capital.

5.2 The Government confirms its intention that defendants whose annual disposable income exceeds the threshold of £3,398 will be required to pay a monthly contribution of 90% of their truly disposable income. We have estimated that about 23% of defendants who appear before the Crown Court will be required to make a contribution from their income and/or capital. Clear and simple routes will support the scheme for those defendants who genuinely cannot afford to pay their Contribution Order. Defendants who consider that they cannot pay will be able to make a hardship application for their means to be re-assessed. A successful hardship application will result in a Contribution Order being amended or withdrawn.

5.3 Convicted defendants with capital assets in excess of £30,000 will be liable to make a further contribution that covers part or all of their defence costs. We estimate that 15% of those defendants who appear before the Crown Court will have capital above the £30,000 threshold. Of those 15%, we anticipate only a small proportion will be liable for the full costs of their defence.

5.4 Acquitted defendants will receive a refund on any contributions made during the course of their case, with interest.

5.5 The Post Implementation Review will be used to assess whether these thresholds are realistic and appropriate for those defendants required to make contributions.

6. SUMMARY OF THE FINAL MEANS TESTING SCHEME FOR COMMITTALS FOR SENTENCE

6.1 Defendants who are committed to the Crown Court for sentence will always pass the “Interests of Justice” (IoJ) test, given the greater likelihood of a custodial sentence. At the moment, legal aid in the Crown Court is granted without reference to a defendant’s means.

This continues to create situations where defendants pay for their defence privately in the magistrates' court, or do not have representation in the magistrates' court, and are then granted legal aid once the case has been committed for sentence.

6.2 The Government has decided to extend the existing magistrates' court scheme to include committal for sentence hearings in the Crown Court. The means assessment in the magistrates' court will be used to confirm whether or not defendants are eligible for legal aid when the case is committed for sentence. Defendants who are not eligible for legal aid for a trial in the magistrates' court will not be eligible for legal aid for their committal for sentence hearing at the Crown Court, unless there has been a change in their financial circumstances. This is because they are identified as having sufficient disposable income to pay for a privately funded defence. Defendants who genuinely feel they cannot afford to pay for part or all of their privately funded costs can submit a hardship application.

7. SUMMARY OF THE FINAL MEANS TESTING SCHEME FOR APPEALS TO THE CROWN COURT

7.1 Defendants convicted at the magistrates' court are entitled to appeal to the Crown Court against their conviction and/or their sentence. Appeals against conviction can be lengthy, as they involve a complete rehearing of the evidence that was before the magistrates' court. By contrast, appeals against sentence are usually much shorter. Appeals are treated as a separate set of criminal proceedings. Consequently, representation orders that are granted to a defendant in the magistrates' court do not extend to appeal hearings in the Crown Court.

7.2 As part of the application process for legal aid, appellants will be required to pass the Interests of Justice test and be subject to an assessment of their disposable income as set down in the existing magistrates' court means test. This assessment will include an additional allowance of £500 to account for the average cost of an appeal to the Crown Court.

7.3 The Government has decided that a flat rate contribution at the conclusion of proceedings is the fairest way of proceeding. Therefore, appellants who have a disposable income above the threshold of £3,398 will be required to make the following contributions towards their legal aid, if their appeal is unsuccessful:

- £250 for an unsuccessful appeal against sentence.
- £250 for an unsuccessful appeal against conviction and the sentence is reduced.
- £500 for an unsuccessful appeal against conviction.

7.4 Appellants who abandon their appeals in court on the day of the hearing, or who do so in advance, and who are not passported and above the income threshold, will still be required to make a contribution to their costs, as set out above.

8. SUMMARY OF ESTIMATED ANNUAL COSTS AND SAVINGS

8.1 As a result of further detailed work done on estimated costs and savings for Crown Court Means Testing since the publication of the Interim Impact Assessment in June 2009, we can say that:

- a) Set-up costs from April 2009 to September 2010 are estimated at £12.2 million
- b) Steady-state costs from then on are estimated at £13.5 million per annum, and may be lower, depending on the cost of collection and enforcement
- c) Steady-state savings are estimated at £52.4 million per annum (RAB), which is made up of £50.1 million from collection and enforcement, and £2.3 million in efficiency savings from the need for Crown Court staff to administer Recovery of Defendants' Costs Orders

8.2 As the business process design work approaches completion, we can confirm that these costs represent a realistic assessment of the position.

8.3 Figure 1.1 compares the base cashflow projections (i.e. before adjustment for optimism bias and other risks) of the pre-recession and two recession-impacted profiles, one the worst case and the other the most likely case.

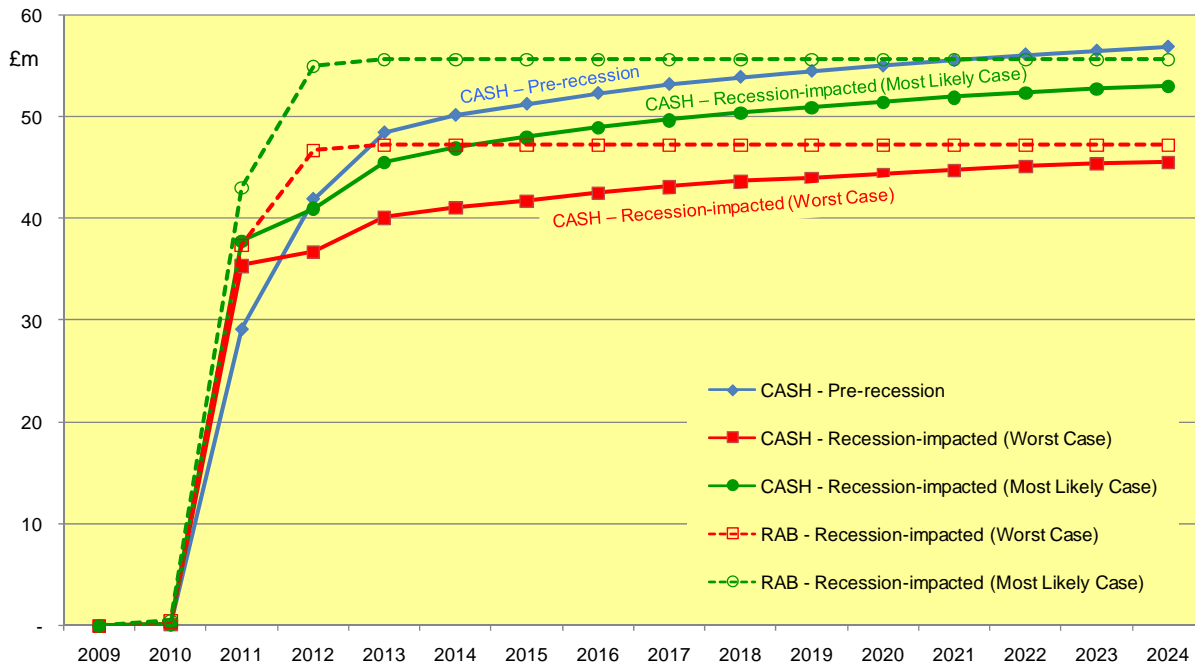


Figure 1.1 – Base projections of savings from CCMT from collection and enforcement

9. IMPACT ON DEFENDANTS

9.1 The Government has already made it clear that the majority of Crown Court defendants will continue to receive free legal representation. For the rest, the amounts they pay will vary according to their individual circumstances.

9.2 The list of allowances taken into account before a defendant is required to make a contribution is comprehensive, and covers a wide range, including housing costs, utility bills, food, clothing, transport, child care and maintenance costs. The new means testing scheme also takes into account a defendant's family circumstances by weighting the living allowance accordingly, so those defendants with greater responsibilities will receive a greater living allowance towards the calculation of their disposable income.

9.3 The Interim Impact Assessment dealt in detail with the requirements of evidence to support an application for legal aid, with a range of case studies highlighting outcomes, and using for illustration purposes average median legal aid costs². The Government has decided that the final contribution scheme will be based on “90th percentile” average costs, which will contain an offence-type cap. These are contained in Regulation 9 (7) of the Contribution Order Regulations, and are based wholly on funding paid under the Litigators’ and Advocates’ Graduated Fee Schemes.

9.4 We have identified a number of potential impacts on defendants.

Unrepresented defendants

9.5 We acknowledged in the Interim Impact Assessment the potential for means testing to lead to an increase in the numbers of unrepresented defendants in the Crown Court. This point has been made to us subsequently by most of the respondents to the recent consultation exercise on the draft Regulations.

9.6 The Government continues to believe that the introduction of the new scheme will not have an unduly adverse impact on the numbers of unrepresented defendants. It is perhaps worth noting that under the old Crown Court means testing scheme, when the threshold for income contributions was lower than the Government now proposes, only 0.3% of defendants appeared unrepresented.

9.7 Current figures from HMCS suggest that around 0.05% of defendants appearing before the Crown Court represent themselves. This equates to a figure of about 45 defendants out of a total defendant population of some 90,000.

9.8 Defendants appear unrepresented for a variety of reasons, and we will use the early adopter phase to test our belief that the introduction of means testing will not lead to significantly greater numbers because income and capital contributions have been introduced.

9.9 HMCS officials have embarked on a base-lining exercise to monitor the extent to which these figures change, and, together with the LSC, have designed business processes which will

² Interim Impact Assessment, p.15 et seq

allow them to mitigate the effects of any increase. The new processes include the following elements, some of which we have already highlighted in this and other documents:

- Every defendant facing trial in the Crown Court will be granted a representation order on submission of a completed application form. The order will continue in force, even if the defendant fails to make income contributions when required to
- Acquitted defendants will have their contributions refunded, with interest.
- A hardship process will act as an additional safeguard for those defendants who genuinely cannot afford to pay.
- Training and guidance will be given to providers, to enable them to explain clearly to defendants the potential costs of their case. Defendants will also be advised about the risks of appearing unrepresented in the Crown Court, and encouraged to seek representation at the earliest opportunity.
- During the early adopter phase, data will be collected on unrepresented defendants. Work will focus on the stages at which they appear unrepresented and the reasons why. To provide a comparison, the same data will be collected at similar sized courts not involved in the early adopter phase, so that the impact of the new scheme can be properly understood.

9.10 All information collected about unrepresented defendants will be evaluated prior to national roll-out, and will feature centrally in the Post Implementation Review, to be carried out at the end of 2010.

9.11 We are confident that Judges and Case Progression Officers will want to devote appropriate time to those defendants who remain unrepresented, and that proper case management procedures will be in place to make sure that there is no undue delay in the trial process.

Defendants with partners and dependents

9.12 The Government recognises that there are implications in the trial process for defendants' partners and their dependents. It understands the concerns that have been expressed by providers and others that the new means testing scheme may have an adverse impact on the family structure, and its ability to cope with a requirement for the defendant to make contributions from income and/or capital.

9.13 Those remanded in custody will usually face a reduction in their earnings (if they are employed) such that they qualify for free representation. For those defendants on bail and being required to make a contribution, limiting the number of payments from income that they will have to make, and ensuring that the range of allowances made, before disposable income is calculated, is set at a level that enables them to maintain the essentials of family life, is a key element of the new scheme.

9.14 Defendants whose circumstances change while the case is on-going – for whatever reason – are entitled to ask for a reassessment of their Contribution Order.

9.15 Several respondents have raised the question of aggregation of income and assets used in the calculation of a partner's contribution. They point to what they see as the unfairness of a situation where a wholly innocent or unknowing partner is required to have their income and assets taken into account in calculating a defendant's liability.

9.16 The Government's decision on aggregation is a reflection of the existence of similar arrangements in magistrates' court means testing, in civil schemes, and in other areas of benefit calculation. We also distinguish the respective responsibility of the defendant and a partner in assessment and enforcement terms. For the assessment process, income and capital will be aggregated; for the enforcement process, the assessing authority will take action against the defendant alone. We have made it clear, in the Equality Impact Assessment at Annex A, and in the Regulations which have been laid, that aggregation will not occur where the partner has a "contrary interest". This will include situations where the partner is the alleged victim of the defendant's actions, or a witness against the defendant at trial.

9.17 Ministers remain determined to protect partners' and dependents' interests in such cases.

9.18 The Government also considers that for a defendant not to make use of the available income at their disposal would lead to lower contributions being made than would otherwise be appropriate, and that aggregation is on the whole fairer in such circumstances.

9.19 In the case of enforcement action against a defendant for non-payment of a contribution order – for example, attachment of earnings or seizing of a motor vehicle – the assessing authority will ask a judge for an order only against the defendant, and not his/her partner, thus preserving the position of the other.

9.20 A number of respondents to the recent consultation exercise have misunderstood the Government's position on enforcement, in particular an assumption that the Regulations permit an automatic forced sale of a property inhabited by a defendant's partner and/or dependents, to recover the balance of a defendant's costs. To assume an order for sale in all cases is unfounded. The Regulations do allow for a forced sale to take place - as a step in protecting the Legal Aid fund - but Ministers are clear that the circumstances in which such an order would be sought will be exceptional. It will be a last resort for defendants who wilfully refuse to comply with their obligation to make a contribution to the costs of their case. Any application to force a sale will have to be made to a judge, who would consider the individual circumstances of the case. The Government considers that this judicial discretion protects the interests of partners and dependents.

9.21 What will be more often the case is that the LSC will apply for a statutory charge over the property, the costs being recovered at the point of future sale. This mirrors the civil scheme.

9.22 Likewise, where a more distant relation or family friend of the defendant is providing the defendant with financial support, it will be open to the assessing authority to take into account the specific amounts given when calculating a contribution. Otherwise, the issue of recovery of costs will be restricted to the income and assets of a defendant, with the hardship route available in all cases, and not the relative or friend.

9.23 The Government has decided that the interest rate applicable to late or non-payment of income and/or capital contributions will be 6% compound *per annum*. The interest rate applicable to refunds to acquitted defendants, or those who have overpaid, will be 2% above the Bank of England's Deposit Account Rate

Judicial apportionment

9.24 Where a defendant in a multi-handed case has been convicted, or partially convicted, he or she can make an application to a judge to have their contribution reduced if they believe they should be liable for a lesser sum, given the level of their involvement in the offence. The same will apply to a single defendant case where he/she is convicted of one or more of a range of charges on the indictment (but not all), and where the conviction(s) are on the least serious of the offences charged.

9.25 The Regulations make it clear that, where apportionment takes place, the difference between the original contribution and the amended one will not be added to the contributions required from any other convicted defendant. Contributions will be “defendant specific”.

9.26 We accept that the operation of judicial apportionment should be kept as simple as possible. We therefore agree with those respondents who have expressed concern about the proposed requirement for the applicant defendant to notify other defendants, and have deleted that requirement from the Regulations.

Defendant elections for trial in the Crown Court

9.27 From 2005 to 2008, the number of defendants electing trial in the Crown Court increased year on year by 3%, 8% and 16%. Over the same period, the number of defendant committed, sent or transferred by the magistrates’ courts increased by 2%, 1% and 14%.

9.28 There is some anecdotal evidence to suggest that the number of defendants electing has increased because of the introduction of means testing in the magistrates’ court in 2006, and it is not an unreasonable assumption. It has also been suggested to us that magistrates have been more inclined to commit defendants for trial because of concern that trial issues were becoming more complicated, and that powers of sentence were not adequate.

9.29 HMCS staff will monitor the effect the introduction of means testing in the Crown Court has on the number of defendants electing trial.

Defendants with mental health and learning difficulty issues

9.30 As we pointed out in the Interim Impact Assessment, the Government is sensitive to concerns that defendants suffering from mental health problems should not be disadvantaged by means testing through being unable to understand, complete or provide evidence in relation to the means assessment process.

9.31 While fitness to plead proceedings may allow for the disposal of cases where the defendant has a serious mental health problem, the Government recognises that the implementation of a means test in the Crown Court may present issues of compliance for some defendants who face less serious mental disorders or disabilities.

9.32 A defendant may be suffering from a mental disorder, but could still be capable of providing instructions to their solicitor, as well as the necessary information regarding their financial status. The lack of a suitable working definition makes it difficult to benchmark existing service provision meaningfully so that the impact of means testing on defendants with mental health problems can be monitored accurately. However, we will draw on existing work that has been done in this field in an attempt to baseline the extent of the issue.³

9.33 We are committed to making sure, as far as possible, that those defendants who need support are given it. The scheme currently in place in the magistrates' courts, where the National Courts' Team at the LSC works with providers where mental health issues are identified as a barrier to completion of forms, will be extended to the Crown Court. The operational aspect of the scheme will be kept under review during the early adopter phase, and as we move to national roll-out.

9.34 Material will be provided to support those with learning difficulties through the process. Easy read guides will be available for those who need a simple but effective way of understanding the requirements of the scheme. We discuss equality and diversity issues in more detail in the Equality Impact Assessment at Annex A.

Defendants – Race, Age and Gender issues

9.34 The Government is aware of the potential impact of the new scheme on members of the defendant population who come from different backgrounds. These concerns are addressed in detail in the Equality Impact Assessment.

10. IMPACT ON THE DEFENCE

10.1 Competition Assessment

Litigators

10.1.1 The Ministry has applied the Competition Filter test, which showed that the proposals are likely to have little or no effect on competition for litigators' firms. No one firm has more than 10% of the market, and existing firms will have no advantage over new or potential firms. The proposals will not affect set up costs. The scheme will not restrict the ability of firms to offer a range of services.

³ See pp 6 & 7 of the Interim Equality Impact Assessment at Annex A

Advocates

10.1.2 As with litigators, the Government does not believe that there will be an adverse competition impact on advocates, be they self-employed or in-house representatives.

Small firms

10.1.3 There is no significant or complex impact on small firms.

10.2 Representation Orders

10.2.1 When a Representation Order is granted after the submission of a completed application form, the Order will continue in force even if the defendant defaults on the terms of a Contribution Order. This will assure defence representatives that they will receive payment for work done under the terms of an Order. A Representation Order will only be revoked where the defendant has made fraudulent claims about their circumstances in order to secure a lower level of contribution or free representation, when their means dictate otherwise. A Representation Order may also be revoked where the assessing authority has issued it in error.

10.2.2 Defendants may apply to have a Representation Order withdrawn at any point in the proceedings after it has been granted. The work done by practitioners up to that time will be paid for under the terms of the Order. It will, however, be the responsibility of the defendant to inform both the assessing authority and their solicitor of their intention to withdraw.

10.3 Evidence Provision Fee (EPF)

10.3.1 An Evidence Provision Fee will be payable to providers in recognition of the assistance they will give to defendants when specific evidence is required to support an application for legal aid. Depending on the number of pieces of evidence required, the fee will either be £45 + VAT or £90 + VAT.

10.3.2 It will be the responsibility of the defendant, and not the solicitor, to make sure the information required is provided. A failure on the part of the defendant to provide the necessary

evidence may mean that the assessing authority imposes an income contribution sanction, until it is forthcoming. We deal in more detail with this aspect in the Interim Impact Assessment.⁴

10.3.3 Providers may wish to have mechanisms in place to ensure that defendants are advised at the earliest opportunity of their potential liability for contributions, and of the need to notify the assessing authority and their representative if they wish to withdraw from a Representation Order. At the recent provider events held in the early adopter areas, it was suggested to us that one way of ensuring this would be for providers to insert a paragraph in the client care letter.

10.4 Training

10.4.1 There will be some impact on both advocates and litigators, who will need to familiarise themselves with the new scheme and be aware of defendants' liabilities to comply with the new arrangements. Training and awareness events will be undertaken prior to local implementation.

11. IMPACT ON THE PROSECUTION

11.1 The new Crown Court means testing scheme is unlikely to have any significant impact on the prosecution. The only impact identified is a potential delay to the proceedings if the defendant chooses to represent him/herself. Detailed contingency plans are being put in place to mitigate this risk, and we refer to these at paragraph 9.9 above.

11.2 At this stage, it is unclear whether defendants' behaviour will change, so that more represent themselves. We have already made reference to experience under the old Crown Court means testing regime (paragraph 9.6). This issue will be reviewed during the early adopter court phase and national roll out in the middle of 2010. The Government is confident that the thresholds are right, and that incentives will be in place to encourage defendants to apply for a Representation Order.

12. IMPACT ON LEGAL AID

12.1 A legal aid and justice impact test (LAJIT) carried out for the Interim Impact Assessment has been reviewed, and is attached at Annex B.

⁴ At paragraphs 10.14 – 10.17, p.13

12.2 The proposed scheme has been designed to ensure there will be few or no downstream impacts on the civil legal aid fund. The Government does not believe that these proposals for Crown Court means testing will increase the current incidence of debt, loss of housing or divorce, because we are targeting readily available, disposable income above a reasonable threshold.

12.3 Currently, no data is held about the impact of a Crown Court conviction on the take up of civil legal aid, and no information is currently collected that would allow a baseline to be established. We will monitor this area closely to identify any changes that could be attributable to the introduction of the proposed scheme. The impact of these changes will be evaluated following national roll out.

13. IMPACT ON HMCS

13.1 Impact on Crown Court Performance

13.1.1 The introduction of a new Crown Court scheme will relieve staff in the Crown Court of having to determine applications for legal aid in cases committed, sent or transferred to them. In practice this means around 6,000 applications per year being removed from the Crown Court. While there is a risk that new Representation Orders will not be in place for the first hearing in the Crown Court, and any additional delay would be of concern, that risk is negligible.

13.1.2 A sound operational system is a high priority for the Government. The new assessment regime will ensure that Crown Court Cases proceed in a timely manner, and the business processes that are currently being refined will support this objective. The early adopter courts will allow the operational systems to be tested, and be governed by a Service Level Agreement between the LSC and HMCS.

13.1.3 In designing the new means testing regime, the Government has undertaken to minimise any risk of disruption to the courts and the wider Criminal Justice System. We have already made clear that Representation Orders will not be withdrawn either if defendants fail to make contributions when required to, or as part of the enforcement process.

13.1.4 These arrangements will permit Representation Orders to be granted early in the process, allowing sufficient time for financial eligibility assessments without compromising the timing of the hearing, or causing any need for an adjournment. Furthermore, in collecting contributions from defendants, the proposed scheme will give them a stake in the swift progression of their case. MoJ will work closely with HMCS to establish a baseline performance in early adopter courts, so any increase or decrease in terms of timeliness and the number of adjournments can be accurately measured.

13.2 Distribution of work

13.2.1 The implementation of Crown Court Means Testing may impact on the distribution of work between the Crown and magistrates' courts for trials in either way cases. There are currently 420,000 either way cases per annum and just over 10% of defendants (49,000) elect

Crown Court trial. The differences in defence costs between magistrates' and Crown Court cases are as follows:

	Crown Court	Magistrates Court
Average costs of a trial	£6,202	£524
Average costs of a cracked trial	£5,109	£333 (an early guilty plea)
Average costs of an appeal	£565	N/A

13.2.2 As we suggested at paragraph 9.28 above, there may be fewer elections to the Crown Court when defendants do not meet the criteria for having their defence costs paid in full, because costs in the Crown Court are greater. The reduction in lower level crime workload in the Crown Court will allow resources to be diverted to more serious cases and ease backlogs. It may increase work in the magistrates' courts, which could impact on CJSSS targets.

13.3 Early Guilty Pleas

13.3.1 Crown Court Means Testing may increase the level of early guilty pleas. Under the new scheme, defendants will have a financial stake in the timely progression of a case. The Government cannot be sure at this stage whether Crown Court Means Testing will change the behaviour of guilty defendants by encouraging them to enter an early guilty plea. If early guilty

pleas increase, this will be of benefit to the Crown Court in terms of reducing the trial workload. Early guilty pleas will also benefit witnesses who will not need to attend court to give evidence. The volume of early guilty pleas will be monitored during the early adopter court phase and beyond.

13.3.2 Details of the early guilty plea rate for the past three years are set out in the following table:

Year	Total no. Of Crown Court Cases (nationally)	Total No. Of Early Guilty Pleas (nationally)	Average No. Of Early Guilty Pleas per Month (nationally)
2006/07	76,110	34,698 (46%)	2,892
2007/08	80,118	41,989 (52%)	3,499

13.3.3 The Government is aware of the concerns of some respondents that financial pressures may encourage defendants to enter guilty pleas when they believe they are, in fact, not guilty or have a reasonable defence to the charge. This particular issue was raised at the recent provider events in the early adopter areas.

13.3.4 The Government remains confident that the thresholds are sufficiently high enough to prevent this, and that protection of a defendant's reputation and/or the risk of a custodial sentence in the event of conviction would be more pressing than the requirement to make a contribution of a few hundred pounds.

13.3.5 Judges will also be alive to the possibility that some defendants may wish to enter an early guilty plea simply in order to reduce the contribution they would otherwise be required to make. As now, the judge must be satisfied that a defendant enters a guilty plea because he or she acknowledges their guilt, and not for financial expediency.

13.4 The role of Crown Court Case Progression Officers

13.4.1 Following on from paragraphs 9.5 to 9.11 above, there is a potential resource impact on Case Progression Officers (CPO) in the Crown Court if levels of unrepresented defendants increase. While not every Crown Court case will need the attention of a CPO, in the cases of unrepresented defendants the CPO will need to maintain close contact to ensure that case

documents are filed in accordance with deadlines, and that the timetable set down for the trial process is followed.

13.5 Local Project Managers

13.5.1 In addition to committing extra resources for an increase in staffing levels in the magistrates' courts to deal with the anticipated extra workload, HMCS has recently recruited a team of Local Project Managers (LPMs). LPMs will act as the main interface between the central CCMT project team and local operational stakeholders as we approach the early adopter phase, through it and beyond. Their key responsibilities will include setting up effective partnerships with judges and staff in the early adopter courts, monitoring impacts of the new scheme, and working with others, including providers, to ensure that training needs are met.

13.5.2 An important part of their job will be to quality control guidance and new forms developed to support the new scheme, and to prepare the early adopter courts to capture the data needed for a full evaluation of the first phase.

14. IMPACT ON MAGISTRATES' COURTS' AND CROWN COURT STAFF

14.1 Magistrates' courts' staff

14.1.1 The impact of the new scheme will be greatest in the magistrates' courts. Applications currently dealt with in the Crown Court will now be dealt with in the magistrates' courts. The additional workload in the magistrates' courts will be, among other things, the number of applications for public funding previously filed in the Crown Court, and the service charge that the LSC pays to HMCS will be adjusted accordingly.

14.1.2 The following table shows the number of applications to the Crown Court in past years:

Year	Number of applications for public funding
2005	4,768
2006	4,279
2007	6,082

14.1.3 There will be costs in terms of time and money for training staff in new operational processes. Magistrates' courts' staff will undertake the additional work involved in verifying

eligibility and producing a Contribution Order. HMCS staff are currently refining the proposed business processes to clarify the amount of additional costs and time required. A time and motion study will be conducted in the magistrates' courts during the early adopter court phase. This report will either validate the estimates or will recommend any necessary changes during the review period following the early adopter phase. The report will confirm costs in time and money before national roll out. We have set out the estimated costs and savings at paragraph 8.1 above.

14.2 Crown Court Staff

14.2.1 There will be a reduction in work for Crown Court staff, because they will not be required to process legal aid applications, or, following the transitional arrangements, manage the RDCO scheme. After national rollout, this resource will gradually wind down. There might therefore be a net resource reduction for the grant of legal aid across both criminal courts, but, overall, resources will be in place to ensure that magistrates' court staff can deal with the increase in applications in a timely way.

15. IMPACT ON THE JUDICIARY

15.1 The scheme will impact on the Judiciary.

15.2 We have already indicated that judges may face extra demands on their time for case management hearings involving unrepresented defendants. We anticipate that the "swings and roundabouts" principle will apply, and that any extra time taken with some defendants will be offset by an efficient and timely disposal of other cases as a result of judges maintaining their involvement with unrepresented defendants.

15.3 In addition, Ministers are aware that pressure of work in some locations of the Crown Court is becoming difficult to manage. If one consequence of the introduction of Crown Court Means Testing is that workload levels become more manageable, then that will be a positive benefit. We have been grateful for an indication from members of the judiciary that this is a reason for the new scheme to be welcomed.

16. ENFORCEMENT IMPACT ON MAGISTRATES' COURTS AND COUNTY COURTS

16.1 There will be an impact on the magistrates' courts and County Courts in terms of enforcement, and that impact will vary depending on the particular enforcement option chosen.

16.2 Enforcement sanctions available pre-conviction will include:

- Attachment of earnings
- Distress warrants
- Clamping orders, subject to the necessary primary legislation

16.3 Enforcement sanctions available post-conviction will include:

- Third party debt orders
- Charging orders

16.4 It is not possible to predict with accuracy the level of compliance, but the assessing authority will work with defendants to support compliance before resorting to court-based action.

17. IMPACT ON THE LEGAL SERVICES COMMISSION

17.1 Responsibility for Effectively Managing the Scheme

17.1.1 The LSC will have overall responsibility for the end-to-end operational processes. HMCS will undertake the majority of the legal aid application processing work under a Service Level Agreement (SLA), as is the current practice for magistrates' court means testing. Complex and hardship applications will continue to be processed by The National Courts' Team (NCT) at the LSC.

17.1.2 New guidance and forms are currently being refined by the LSC, HMCS and MoJ, and will form an important part of the training programme that will be delivered to court staff and providers in November and December 2009.

17.1.3 For further detail of the anticipated impacts on the LSC, please refer to the Interim Impact Assessment published in June 2009.⁵

⁵ Interim Impact Assessment, pp 42-43

INTERIM EQUALITY IMPACT ASSESSMENT

Introduction

This is the Interim Equality Impact Assessment for the proposed new Crown Court Means Testing scheme. It builds on the screening exercise conducted by the Ministry of Justice, which was published with the Interim Impact Assessment and Response to Consultation on 8 June 2009.

It also takes into account views on equality and diversity expressed by providers in the recent round of events held in the proposed “early adopter” areas, and issues raised in the recent consultation exercise on the draft Regulations to support the new scheme.

RACE EQUALITY

Public authorities in Britain have a duty to promote race equality. This means that they must have due regard as to how they will eliminate unlawful racial discrimination, and promote equal opportunities and good relations between people of different groups. The Ministry of Justice is also under a specific duty to conduct race equality impact assessments of its policies in relation to the public duty to promote race equality. As part of this duty, it must identify whether there is a differential and adverse impact on particular racial groups.

Background

As outlined in the initial equality impact screening document⁶, Crown Court data available to us suggests that all BAME groups are over-represented within the Criminal Justice System when compared to their representation within the population as a whole. We have considered the views of providers and representative groups, and identified issues that we need to monitor as the scheme begins, and as it is rolled out across England & Wales.

⁶ Interim Impact Assessment, p.44 et seq.

Emerging themes

- (i) We will focus on the potential for the number of unrepresented defendants to increase, including those from a BAME background. While the Government acknowledges that this is a risk, they also believe that the risk is minimal. If these defendants are
- (ii) concentrated in the lower income groups, and are less likely to own property, then the likelihood is that they would qualify for free representation.
- (iii) In order to ensure that the BAME group of defendants is not disproportionately affected under the new scheme, we will work to establish whether there has been any negative effect by using the results of the Minimum Data Set Exercise, currently being carried out by the Office for Criminal Justice Reform in conjunction with Local Criminal Justice Boards. We anticipate that the results of this work will be available by the time the final Equality Impact Assessment is produced, in April 2010. If the evidence shows that we need to take mitigating action, we will explore how that might be done. One example might be to make use of other stakeholders to improve communication strategies to engage with BAME defendants.
- (iv) Concerns have been expressed to us that extended family structures, particularly within the Asian community, may be put under pressure if collection and enforcement criteria are not strictly defined. The example that has been suggested is one where the defendant and/or his/her immediate family are being supported by a more distant family member, and the likelihood that any enforcement action could be taken against that distant family member in an effort to recover costs that the defendant is unable to pay. Under the proposed collection and enforcement policy, it is not the Government's intention to pursue relatives for contributions or costs that the defendant has a responsibility for. However, it will be open to the assessing authority to take into account any financial assistance being given to the defendant when calculating household income for means testing purposes. The hardship review route will remain available for those defendants who believe they are genuinely unable to contribute to their defence costs.

Foreign nationals and asylum seekers

- (v) We are aware that there are particular issues to do with defendants who are foreign nationals or asylum seekers, either bailed or remanded into court custody. Among them are availability of documentary evidence, a lack of proof of identity and an unfamiliarity with the criminal justice system. We appreciate that these individuals may have the need for a level of support through the means testing process that is
- (vi) not required by other types of defendant. A range of support will be offered, from guides available in appropriate languages, to “Easy Read” guides and advice from providers. For remanded defendants, we will work to ensure that Legal Services Officers within prisons have the necessary information to be able to assist defendants.
- (vii) The recent provider events, held at the “early adopter” courts, provided us with an opportunity to discuss with the profession the kinds of information they and defendants should have access to. The input of providers has been valuable. Part of the training to be offered by the Legal Services Commission to providers in November and December 2009 will focus on the material available to them to advise their clients appropriately.
- (viii) Materials will also be made available in third sector outlets, such as Citizens’ Advice Bureaux, and we propose to examine other ways in which this group of defendants can be engaged. In addition, information from the early adopter phase will be gathered to see what impacts, if any, are being experienced.

Defendants who use a language other than English

- (ix) For those defendants who use a language other than English, we will make available an “Easy Read” pocket guide to help guide them with support from a solicitor.
- (x) One of the early adopter courts will be Swansea Crown Court. We will make available Welsh translations of forms, guides and leaflets to defendants and their advisers appearing in Swansea and in its committing magistrates’ courts under the new scheme⁷. We will keep under review the requirement and demand for such facilities.
- (xi) When Crown Court Means Testing is rolled out across Wales, we will extend the same facilities.

⁷ In line with the provisions of the Welsh Language Act 1993, and guidance from the Welsh Language Board

- (xii) We will explore the possibility of extending the range of printed material services, should there be a demonstrable need for them.

GENDER EQUALITY

The Equality Act 2006 places a statutory duty on all public authorities when carrying out their functions to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women. The Ministry of Justice also has a specific duty to conduct gender equality impact assessments of its policies in relation to the public duty to promote gender equality and, within this, to identify whether there is a differential and adverse impact on people of either gender.

Background

In the initial screening exercise, we pointed out that the vast majority of defendants appearing in the Crown Court in 2007-8 were men.⁸

We believe that, because all defendants will be granted a legal aid Representation Order in the Crown Court, and liability for contributions will be based solely on the financial circumstances of the defendant, there will be no negative impact.

However, certain issues have been raised, which we would want to deal with at this stage.

Emerging themes

- (xiii) We have been asked about the position within the means testing scheme of partners of defendants who are the victims, particularly of domestic or sexual violence. Regulation 26 of the draft Crown Court Means Testing Regulations says that where the partner of a defendant has a contrary interest in proceedings, for example, as the victim, then aggregation of income and capital will not apply for the purposes of calculating contributions. Ministers are determined that partners, as victims, should
 - (xiv) have access to the full range of support offered, and that includes protecting their interests in criminal proceedings.

⁸ In that year, CREST data shows that 83% of trial defendants were male.

- (xv) A question has also been asked about the position of a partner and/or dependents in a case where the defendant is convicted and jailed, and costs remain to be taken from capital and equity. Concern has been raised that, under the regulations, the property would automatically be the subject of a forced sale, leaving the partner and/or dependents homeless. Ministers are clear that this scenario would be
- (xvi) unacceptable. The LSC would more often seek to put a land charge on the property, the costs being recovered at the point of sale. While the draft regulations do permit the LSC to apply to a judge for a forced sale of property as part of the enforcement process, every case will be treated on its merits, and individual circumstances taken into account. Forced sales will be a last resort, in very limited circumstances – where, for, example, the quality and security of life for the partner and dependents would not be unduly affected. The fact that judicial sanction is necessary highlights ministers' belief that the interests of partners and dependents should be protected, where appropriate. We have covered this issue in a case study prepared for the Interim Impact Assessment, published on 8 June 2009⁹.
- (xvii) Concern has also been expressed about the allowances made for pregnant partners and children under the age of 1 in the cost of living allowance. It has been suggested to us that specific provision should be made for pregnant partners, and that the ratio allowable for a child under the age of 1 should be greater than it is. In common with those regulations covering civil legal aid, allowance is made once a child is born. While it is true that the ratio proposed under the means testing regulations for a child under 1 is less than that suggested by the Joseph Rowntree Foundation in its report on recommended minimum income standards¹⁰, this is offset by a more generous allowance for adult members of the family than that recommended by the Rowntree paper. As we have pointed out, the hardship route will exist for those who believe they cannot afford to make the contributions required.

DISABILITY EQUALITY

The Disability Equality Duty came into force on 4 December 2006. The Ministry of Justice has published a Disability Equality Scheme, which is available on the Ministry's website. This sets out the actions that the Ministry will take to promote disability equality.

⁹ Crown Court Means Testing: Interim Impact Assessment 8 June 2009, p.30

¹⁰ This report can be found at www.minimumincomestandard.org

When carrying out its functions, the Ministry must have regard to the duties placed upon it by the Disability Discrimination Act 2005. From December 2006, the Ministry has also been under a specific duty to conduct disability equality impact assessments of its policies in

relation to its public duty to promote disability equality. Within this, the Ministry has a responsibility to identify whether there is a differential and/or adverse impact on disabled and other people.

Background

As we pointed out in the initial equality impact screening exercise, there is currently no evidence base in relation to defendants with a disability.

However, we also pointed out the process by which, for example, those defendants with a mental health issue were dealt with under the current magistrates' court means testing scheme. This topic is covered in more detail later in this assessment.

Emerging themes

- (xviii) We are conscious that those with learning difficulties, addictions or chronic health problems will need particular support through the new scheme. We are committed to providing reasonable adjustments to ensure accessibility, and to providing a level playing field for all defendants.
- (xix) To mitigate difficulties that may arise, we will explore options for providing "Easy Read" guides in places other than solicitors' offices, for example, police stations and Citizens Advice Bureaux. In addition, we will look at the possibility of developing a protocol with those other outlets to provide guidance material to defendants. Braille and/or audio versions of the guidance will be available on request.
- (xx) The "Easy Read" guides have been developed for the scheme by the LSC's Client Diversity Group. We have been determined to engage with and involve those with disabilities in the development of support for those defendants in need of it.
- (xxi) Concern has been expressed that those with caring responsibilities will be disadvantaged by the new scheme. We have been asked if we will review the list of allowable expenditure regarding living allowances. Examples that have been

- (xxii) The list of the types of people who will be taken into account is taken from the civil legal aid scheme. During the “early adopter” phase we will monitor whether that list ought to be expanded as a result of Crown Court Means Testing, but it is important to retain consistency with other schemes. We consider that the hardship route that will be in place may be the more appropriate avenue. We are conscious that administration of the scheme needs to be kept as “light touch” as possible, to avoid burdening staff, providers and defendants unduly. We are, however, sensitive to the concerns that have been expressed, and will continue to monitor the extent to which this issue arises.
- (xxiii) In the Interim Impact Assessment, published on 8 June 2009, we considered in some detail the position of defendants who have mental health issues¹¹. We described the process by which these defendants in the magistrates’ court are helped by the National Courts Team at the LSC, and we proposed that a similar arrangement should apply in the Crown Court. We continue to believe that the current process is the best way forward, and will monitor the situation during the “early adopter” phase.
- (xxiv) We have studied the recent report prepared by Lord Bradley on engaging defendants with mental health issues and learning disabilities in the Criminal Justice System¹², and drafts of work in progress currently being undertaken by the Legal Services Research Centre, which focus on, among other issues, mental health.¹³
- (xxv) We are sensitive about the extent to which defendants with these issues need assistance through the Crown Court process, and we will work to make sure that defendants’ needs are addressed in the most appropriate way. For example, we will work closely with Legal Services Officers within the prison system, and with providers, to ensure that they have the resources to help defendants understand the process, and what they need to do to comply with the new scheme.

¹¹ Interim Impact Assessment p.32

¹² The Bradley Report: Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system, pub. April 2009 by the Department of Health

¹³ V Kemp (forthcoming) Criminal Defence Services: legal advice and representation in the criminal justice system

AGE EQUALITY

CREST data from the Crown Court shows that there is a greater concentration of younger people in the Crown Court defendant population than in the population as a whole.¹⁴

Our assumption, backed up by research we have done into the relative age bands of Crown Court defendants, is that there would be a positive impact in age terms. It is more likely both younger and older defendants would be passported, because they are in receipt of relevant benefits, or not be liable to make a contribution because they would fall below the disposable threshold.

(xxvi) Research we have carried out suggests that those remanded defendants aged 60 and over represent about 2.5% of the prison population as a whole.

(xxvii) Again, for this group, we would not expect there to be an unduly negative impact when means testing is introduced. Income contributions are likely to be mitigated by passporting benefits, though there remains a possibility that this age group will have accumulated sufficient capital and equity to be required to make a contribution upon conviction. We will monitor this aspect closely as the scheme progresses.

RELIGION AND BELIEF

There is no evidence base in relation to defendants' religious beliefs.

SEXUAL ORIENTATION

There is no evidence base in relation to defendants' sexual orientation.

For both religion and belief and sexual orientation issues, we will address any comments and feedback that come to light during the "early adopter" phase.

MONITORING AND REVIEW

The Crown Court Means Testing Project team has established an Evaluation Workstream group, which includes as part of its remit a team dedicated to examining equality and diversity issues. This team will support the implementation of Crown Court Means Testing by ensuring its delivery meets the duties we have under equality and diversity legislation.

¹⁴ Nearly 25% of all defendants whose trials were disposed of in 2007/8 were in the 20-24 age group

The group has revised the communications strategy to ensure that key stakeholders have had an opportunity to be involved with the development of the scheme.

The group will review any data and issues, and revise this Equality Impact Assessment accordingly. Diversity data will contribute to the overall evaluation framework of the scheme. The final Equality Impact Assessment will be published in April 2010.

ANNEX B

Legal Aid and Justice Impact Test

Please answer as many questions as possible on this form before you contact the Ministry of Justice (MOJ). It covers possible impacts on courts and/or Tribunals, the judiciary and legal aid. Please provide best estimates where exact figures are not yet known. Forward the completed questionnaire to the Better Regulation Unit in the Ministry of Justice using the email address: consultation@justice.gsi.gov.uk

If you have any queries about this form, please e-mail or telephone:
Julia Bradford: 020 3334 4492 julia.bradford@justice.gsi.gov.uk

Section One – General Information

In brief, what is your proposal?

To introduce a means testing scheme for legal aid into the Crown Court which fairly and accurately identifies those who can genuinely afford to contribute towards their defence costs, and targets free legal aid at those who need it.

What is your proposal intended to achieve, over what geographical area (e.g. England, England and Wales) and in what timescale?

To make more effective use of public resources through the targeting of free legal aid at those who genuinely need it in the Crown Court in England and Wales.
To make eventual estimated net annual savings of up to £40m per year.
To undertake an early adopter phase in 5 Crown Courts from January 2010, and we intend to implement the scheme across England and Wales during the course of 2010.

What public commitments have been made and to whom?

The Criminal Defence Service Act 2006 provided for the reintroduction of means testing and contributions. Means testing was introduced in the magistrates' courts in October 2006, and the Government has always made clear its intention to introduce a similar scheme in the Crown Court.

How does the proposal change what happens now?

Under the proposed scheme every defendant who is committed, sent or transferred for trial to the Crown Court will be entitled to legal aid through a representation order provided s/he passes the IoJ test and they provide information and evidence of their means alongside their application. Following committal to the Crown Court, defendants who have sufficient disposable income will be required to make a fixed number of monthly contributions, with a further payment upon conviction from those defendants who have capital assets in excess of £30,000.

Who will be affected and in what numbers?

We estimate that 1 in 4 Crown Court defendants will make some contribution towards their publicly funded defence costs, depending on their individual financial and family circumstances.

Section Two – The impact of the proposal on the courts and/or Tribunals
Do you expect there to be an impact on the Courts Service or on the Tribunals Service (or both)? Are those impacts likely to require new IT systems and/or new forms, training or guidance for court or tribunal staff?
There will be an impact on HMCS processes and staff (see IA). There will be no impact on the Tribunal service. Revisions to the existing IT system and forms will be required. Training and guidance will be provided to LSC and HMCS staff, the judiciary and practitioners. As with the magistrates' court means testing scheme, HMCS will be remunerated through a Service Level Agreement for time spent on administering the Crown Court means testing scheme.
Do you expect more or fewer cases to come to the Courts Service or Tribunals Service as a result of the proposal?
There should be no significant impact on the court caseload. It is possible that there could be a small rise in hearings to seek judicial agreement to enforcement measures such as clamping orders or distress warrants, but this will be minimal. The scheme has been designed to minimise any risk of disruption – through an increase in litigants in person, adjournments, ineffective and vacated trials and a decrease in timeliness – to the courts, to other organisations within the wider criminal justice system, and to initiatives such as CJSSS that are delivering a more effective and responsive justice system for victims and the public.
Does your proposal create a new right of appeal or route to judicial review? If yes, how will these be handled? Has the use of alternative dispute resolution (ADR) procedures (including mediation, conciliation and ombudsman schemes) been considered?
No.
Section Three - The Impact of the proposal on Judges
Are you able to estimate whether your proposal will lead to a change in the number or type of judges required? If yes, please explain these changes.
No.
If more judges need to be appointed, when will they be needed?
N/A
Are there likely to be new judicial training requirements as a result of the proposals?
Yes – there will be training/guidance on the new scheme for the judiciary

Section Four – The Impact of the proposal on Legal Aid
Is your proposal likely to have an impact on Legal Aid?
Yes.
If yes, which type of legal aid is likely to be affected: i) criminal or ii) civil and family or iii) asylum?
Criminal, although there is a small risk of downstream costs to civil legal aid in terms of additional acts of assistance.
If yes, do you expect Legal Aid costs to increase or reduce as a result?
The estimated annual savings to the legal aid budget are set out in the IA.

Your completed questionnaire will be considered by relevant MOJ officials to establish whether your proposals will have an impact on legal aid or other aspects of the administration of justice. If no impacts are identified this should be agreed with MOJ and then recorded on the “Complementary Impact Test” sheet of the Impact Assessment. However, if a potential impact is identified you will need agree an estimate of costs with MOJ and agree arrangements for the costs to be met.

Your contact details	
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