

Title: Reforms to increase and extend the Victim Surcharge IA No: MoJ159 Lead department or agency: Ministry of Justice Other departments or agencies: HM Courts and Tribunals Service	Impact Assessment (IA)		
	Date: 02/07/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary Legislation		
Contact for enquiries: victimsconsultation@justice.gsi.gov.uk			

Summary: Intervention and Reforms	RPC Opinion: RPC Opinion Status
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Cost of Policy Reforms			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£70m - £130m	-	-	No NA

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

Despite an original intention to apply the Victim Surcharge to other court disposals and fixed penalty notices, since its introduction in 2007 the Surcharge has only been ordered on fines. It is ordered at a flat rate on all fines, and this rate has not been changed since 2007 despite inflation. It is both right and important that offenders contribute more to the cost of supporting victims.

What are the policy objectives and the intended effects?

It is a priority of the Government that offenders bear a greater proportion of the costs incurred by the state in supporting victims of crime. The proposed increase and extension of the Victim Surcharge as well as increasing Penalty Notices for Disorder (PNDs) will ensure a greater percentage of offenders contribute to the cost of support services. Extending to in court disposals other than fines will make the application of the Victim Surcharge more equitable across offenders.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Base Case: Do nothing.

Policy Reforms: Implement the reforms to the Surcharge as set out in the consultation response.

a) The Surcharge will be payable in cases where a court deals with an adult offender by way of:

- i. a conditional discharge at a flat rate of £15;
- ii. a fine at 10% of the fine value, with a minimum amount of £20 and a maximum cap for the Surcharge ordered on fines at £120;
- iii. an adult community sentence at a flat rate of £60;
- iv. a sentence of imprisonment, including where suspended, at £80 for a sentence of 6 months and below; at £100 for a sentence of over 6 months and up to 2 years; and at £120 for a sentence over 2 years;

b) The Surcharge will be payable when a court deals with a juvenile offender by way of:

- i. a conditional discharge at a rate of £10;
- ii. a fine or community sentence at a rate of £15;
- iii. a custodial sentence of any length at a rate of £20;

c) Increase the value of PNDs by £10 on both lower and higher tier notices: the additional revenue will be spent on victim services

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 10/2015					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/Q	Non-traded: N/Q

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

Signed by the responsible Minister: _____ Crispin Blunt _____ Date: 22nd June 2012

Summary: Analysis & Evidence

Policy Reform

Description: Implement the reforms as set out in the consultation response

- a) The Surcharge will be payable in cases where a court deals with an adult offender by way of:
- a conditional discharge at a flat rate of £15;
 - a fine at 10% of the fine value, with a minimum amount of £20 and a maximum cap for the Surcharge ordered on fines at £120;
 - an adult community sentence at a flat rate of £60;
 - a sentence of imprisonment, including where suspended, at £80 for a sentence of 6 months and below; at £100 for a sentence of over 6 months and up to 2 years; and at £120 for a sentence over 2 years;
- b) The Surcharge will be payable when a court deals with a juvenile offender by way of:
- a conditional discharge at a rate of £10;
 - a fine or community sentence at a rate of £15;
 - a custodial sentence of any length at a rate of £20;
- c) Increase the value of PNDs by £10 on both lower and higher tier notices: the additional revenue will be spent on victim services

FULL ECONOMIC ASSESSMENT

• Price Base	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 70	High: 130	Best Estimate:
	2011/12	10			
COSTS (£m)	Total Transition (Constant Price)	Year	Average Annual (After Transition) (Constant Price)	Total Cost (Present Value)	
Low	0	4	0	0	
High	1. 15	4	5	40	
Best Estimate	-		-	-	
Description and scale of key monetised costs by 'main affected groups'					
MoJ/HM Treasury/CPS (and other prosecutors): Reduction in combined fine and court cost revenue					
Other key non-monetised costs by 'main affected groups'					
MoJ: further possible reductions in fine revenue					
MoJ (HMCTS): Increase in administrative costs and in enforcement workload. Possible increase in court hearings					
MoJ (NOMS): Possible increase in number of Surcharge and financial imposition defaulters sent to prison					
HM Treasury: reduction in PND revenue, possible additional reductions in fine revenue					
CPS (and other prosecutors): Possible further reduction in court cost revenue					
BENEFITS (£m)	Total Transition (Constant Price)	Year	Average Annual (After. Transition) (Constant Price) (to nrst £5m)	Total Benefit (Present Value)	
Low	30	4	15	95	
High	50	4	20	130	
Best Estimate	-		-	-	
Description and scale of key monetised benefits by 'main affected groups'					
Victims: increase in revenue for victims' services estimated at £15m - £20m per year					
Other key non-monetised benefits by 'main affected groups'					
Victims: victims may also value offenders taking greater responsibility for their crimes and doing more to repair the damage caused					
Providers (and potential providers) of support services for victims and witnesses: providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.					
Wider society: benefit of offenders making greater recompense to victims and a fairer application of the Surcharge across a range of disposals					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5

The additional revenue for victims' services comes from offenders. The welfare of offenders is assumed to have a weight of zero so costs to them of higher impositions are not recorded as impacts. The timings of the impacts of the reforms, particularly those relating to custody, are uncertain. The impact on victims is sensitive to the payment rate and the number of offenders given community sentences. **We assume the payment rate for the Surcharge 70% for those given conditional discharges and fines, 60% for those given community sentences and suspended sentences and 40% for those sentenced to immediate custody. We assume a payment rate of 54% for PNDs. These are all highly uncertain.** The rate for immediate custody depends in part on the extent to which money can be collected from offenders in prison. We also assume the number of offenders given the relevant disposals remains at 2011 levels. They could vary, including if the Surcharge has a deterrent effect. The lower estimate is based on 20% optimism bias. We assume the reform relating to PNDs has an impact as soon as it is implemented, that reforms relating to conditional discharges, fines, adult community sentences, and suspended sentences and juveniles take 6 – 18 months to have their full impact, and the reform relating to custodial sentences takes 30 months for Crown Court sentences and 18 months for magistrates court sentences.

The cost to the CPS and other prosecutors is sensitive to the impact of the Surcharge on the amount of costs ordered by sentencers and on the proportion of offenders who comply with their cost orders. It is also sensitive to the response of HMCTS to any increase in non-compliance.

The impact on fine revenue to the MoJ and HM Treasury is sensitive to the effect of a larger Surcharge on compliance with fines. It is also sensitive to the response of HMCTS to any increase in non-compliance. The impact on PND revenue to HM Treasury is sensitive to the impact of an increase in PNDs on the payment rate.

The impact on MoJ (HMCTS) depends on the proportion of offenders who comply an order to pay the Surcharge, and the impact of the Surcharge on the proportion of offenders who comply with a fine or cost order. It also depends on resourcing decisions. There will only be a direct cost if additional resources are put into enforcement as a result.

The impact of the reforms relating to custody are also sensitive to the implementation of the Prisoners' Earning Act 1996 (PEA) and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to deduct earnings from a wider group of prisoners than those that could be covered by the PEA. These may leave offenders in custody less able to pay any Surcharge.

The impacts of all the reforms are sensitive to any independent changes in enforcement practices by HMCTS.

The impacts of all the reforms except the increase in PNDs are sensitive to independent changes in the use of compensation orders by sentencers (as compensation takes priority over the Surcharge both at the point of sentence and for enforcement).

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: -	Benefits: -	Net: -	No	NA

Evidence Base (for summary sheets)

Introduction

1. This impact assessment is one of a group of impact assessments to accompany the consultation response on the strategy for victims and witnesses. Other impact assessments in the consultation response will focus on:
 - An overarching impact assessment on the overall impact of all of the reforms
 - Quality and Outcomes in Support Services
 - Locally led commissioning of victim services
 - Using money raised from motoring Fixed Penalty Notices increased by the Department of Transport to fund victims' services
 - Reforms to the Criminal Injuries Compensation Scheme
 - Compensation for victims of overseas terrorism
1. This Impact Assessment considers reforms to extend the Surcharge to conditional discharges for adults; to increase the value of the Surcharge ordered on fines for adults; to extend the Surcharge to adult community sentences; to extend the Surcharge to custodial sentences for adults, including suspended sentences, and to use additional revenue from increased PNDs for the same purposes as the Surcharge. It also considers the reforms to extend the Surcharge to juvenile offenders.
2. Following a public consultation, the Domestic Violence, Crime and Victims Act 2004 amended the Criminal Justice Act 2003 by creating a duty for the courts to order a Surcharge when dealing with an offender. It was implemented in April 2007 at a flat rate of £15 payable on all fines, including fines imposed on juvenile offenders. The intention had always been to extend the Surcharge to other disposals including custodial sentences and community sentences, and to increase the value of penalty notices for disorder and fixed penalty notices, the additional revenue to be used to fund victims' services. Proceeds from the Surcharge are ring-fenced to fund non-financial support services for victims and families.
3. The current £15 Surcharge on fines has raised a total of £41.9million since it was introduced in 2007 and has funded Independent Domestic Violence Adviser Services, Witness Care Units, Victim Support Plus and the Victims' Fund – which covers homicide, hate crime and sexual violence services. The Surcharge raised just over £3.8million in 2007/08, £8.1million in 2008/09, £9.2million in 2009/10, £10.5million in 2010/11 and £10.3 million in 2011/12.

Rationale for intervention

4. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the reform itself should avoid creating a further set of disproportionate costs and distortions. The Government may

also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

5. The aim of the reforms is to improve fairness in two ways. The first is to distribute the considerable financial expense of providing support to victims of crime by increasing the contribution of offenders to the costs incurred by the state in supporting victims to cope and recover. Approximately £66m is spent by central government each year on victim and witness support services. Offenders contribute only around £10m towards this total spend.
6. The second way of improving fairness is by ensuring more offenders pay a contribution towards the costs of supporting victims, with the level of contribution through the Surcharge being more proportionate to the seriousness of the sentence imposed by the court. Currently only offenders ordered by a court to pay a fine are ordered to pay the Victim Surcharge. Extending the range of in-court disposals on which the Surcharge would be payable, through which offenders contribute to victims' services, at a value which is more proportionate to the sentence, will make for a fairer system. Under our reforms individuals issued with a PND (an out of court disposal) would contribute less than offenders given a conditional discharge, who in turn would contribute less than offenders fined in court, the majority of whom would contribute less than offenders given adult community sentences. Offenders subject to custodial sentences would contribute in proportion to the length of sentence handed down. This approach will allow the comparative seriousness of the sentence to be reflected in the amount of the Surcharge which a person is ordered to pay. (Note that when multiple sentences are imposed in respect of one offence, the Surcharge would only be payable on the sentence attracting the highest surcharge.)
7. This is not a straightforward equity argument, since typically we do not place value on offender welfare when assessing impacts. Rather, it is based on the idea that members of society value having a justice system that delivers appropriate and proportionate penalties. At present conditional discharges, which are a less serious sentence than a fine, are not subject to the Surcharge. Fines are generally imposed for less serious offences than community sentences (which can only be imposed for offences for which a custodial sentence is available in statute) and smaller fines imposed for less serious offences than larger ones. Custodial sentences are imposed for the most serious offences. The current arrangements, under which the Surcharge is ordered at a flat rate on fines and is not applied at all to community sentences or custodial sentences may therefore be seen as "unjust".

Main affected groups

8. These reforms will impact on:
 - I. Victims of crime
 - II. The Ministry of Justice (MoJ), including HM Courts and Tribunal Service (HMCTS), which is an agency of the MoJ
 - III. HM Treasury/government revenue that is not ring-fenced for victims' services
 - IV. Providers (and potential providers) of support services for victims of crime

9. There may also be impacts on:
 - I. The Crown Prosecution Service (CPS) and potentially also on other prosecutors
 - II. The National Offender Management Service (NOMS), which is an agency of the MoJ
 - III. Wider society
10. Note that there will also be impacts on offenders (including individuals, businesses and public bodies) sentenced in court to conditional discharges, fines, community sentences and custodial sentences and persons issued with PNDs. However, impacts on offenders are not counted for the purposes of assessing the net impact of the reforms. The impact on businesses is considered as part of the mandatory Competition and Small Firms specific impact tests at the end of this document. The possible effects on offenders in terms of the protected characteristics specified in the Equality Act 2010 are considered in the Equality Analysis that accompanies the consultation response.

Note on territorial application

The reforms in this Impact Assessment apply to England and Wales.

Note on timing

11. The policies in all the Impact Assessments published alongside the Government consultation response are assessed from a start date of July 2012. We assume Surcharge reforms relating to conditional discharges, fines, community sentences, suspended sentences and immediate custodial sentences handed down in the Crown Court are implemented in October 2012. Reforms to PNDs are assumed to be implemented in April 2013. The extension of the Surcharge to immediate custodial sentences handed down in the magistrates' court is assumed to be implemented in July 2014
12. We assume the reform relating to PNDs has an impact as soon as it is implemented, that reforms relating to conditional discharges, fines, adult community sentences and juveniles take 6 – 18 months to have their full impact, and the reform relating to custodial sentences takes 30 months for Crown Court sentences and 18 months for magistrates' court sentences.

Cost and Benefits

13. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these reforms. The costs and benefits of the reforms are compared to the base case ("do nothing" scenario). Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the reform impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Base Case

14. This is the “do-nothing” scenario which involves leaving the Surcharge applied to fines at £15. Because the do-nothing scenario is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV)¹.
15. £10.3million was raised from the £15 Surcharge on fines in 2011/12. In 2011, about £185million was imposed in fines, and about £155million was collected (though not all fines collected in the year will have been imposed in the same year).
16. The most recent published statistics relate to 2011 when 851,600² offenders were given a fine as their primary disposal. The average number of fines given per year over the period 2006 – 2010 was 926,700. The median fine given in 2011 was £175 and the mean fine was £215.³
17. Offenders are categorised as “individuals” and “other” offenders. This latter category covers companies and other businesses, local authorities, public bodies, etc. In 2011, 6,900 offenders in this category received fines – accounting for slightly less than 1% of all fines imposed. The average proportion of fines imposed on offenders in this category over the period 2006 – 2010 was also slightly less than 1%.

Policy Reforms

a(i) Make the Surcharge payable in cases where a court deals with an adult offender by way of a conditional discharge, at a flat rate of £15.

Costs

Costs to MoJ (HMCTS)

18. We anticipate that there will be an increase in HMCTS’s administrative and enforcement workload. It is likely that a percentage of those given a conditional discharge will not comply with the order to pay a Surcharge and enforcement activity will be required. This percentage may be greater where individuals are also ordered to pay compensation and costs. We are not able to predict the exact nature or scale of this impact (see discussion below in section on net impact of, sensitivities and risks).

Costs to the CPS (and other prosecutors)

¹ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

² NB all statistics on volumes of sentences are quoted to the nearest 100.

³ Criminal Justice Statistics, Quarterly Update to December 2011 (Ministry of Justice)

19. There may be a cost to the CPS (and other prosecutors). The Surcharge takes priority over costs both at the point of sentence and in the application of payments received from the offender. The Surcharge may inhibit courts from ordering costs against the offender at all, and when they do, these might be at a lower level. The extension of the Surcharge may therefore reduce the amount of costs imposed and due to the Surcharge taking priority over discharging cost orders when received in the court there may also be reduced costs paid to the CPS and other prosecutors. Information on the value of cost orders imposed and discharged on those sentenced to conditional discharges is not available, so we are not able to estimate the likely scale of this impact.

Benefits

Benefits to victims

20. The reform will result in an increase in spending on services for victims. As no similar financial impositions are made on all those sentenced to conditional discharges we do not have direct information to help us to predict the likely payment rate of the Surcharge. We therefore assume as a central case that the payment rate will be similar to that for fines, which we assume to be 70%.⁴

21. In 2011, 78,200 conditional discharges were given to offenders over 18. On this basis, our central estimate of additional revenue for victims' services from this reform is £1m (to the nearest £0.5m). As there is considerable general uncertainty around the impact of these reforms, we also calculate a lower estimate based on applying 20% optimism bias. To the nearest £0.5m, therefore, we estimate a range of £0.5m - £1m.

22. We assume it will take 6 – 18 months for the reform to have its full impact. The average time from offence to sentencing is around 6 months.⁵ In at least some cases there will then be a further delay before the Surcharge is collected.

23. In addition, victims may value offenders given a conditional discharge taking greater responsibility for their crimes and doing more to repair the damage caused.

Benefits to providers and potential providers of support services

24. Providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.

Benefits to wider society

25. If the extension is perceived by the public as bringing the system closer to one in which all offenders take responsibility and make greater financial reparation for their actions, there may be benefits in terms of fairness/public confidence in the justice system

⁴ See discussion in the section on **Costs of Reform a(ii)** below

⁵ Court Statistics Quarterly, April – June 2011 (Ministry of Justice)

Net Impact, sensitivities and risks

26. We expect this reform to increase the amount of revenue collected for victims' services by around £1m. We also expect it to decrease the amount of costs collected by the CPS and other prosecutors. We would expect the overall impact on revenue to be positive, though in principle it could be neutral. We also expect it to increase HMCTS's enforcement workload.
27. The impacts of the reforms on victims and on the CPS (and other prosecutors) are highly sensitive to the responses of sentencers, of offenders to paying the Surcharge and of HMCTS enforcement.
28. The impact on victims is sensitive to whether the Surcharge is ordered on all offenders dealt with by means of a conditional discharge. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero). The impact on victims is also sensitive to the compliance rate for the Surcharge (the proportion of offenders who pay without any enforcement being undertaken) and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions. The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.
29. We have assumed a payment rate of 70%, but this is highly uncertain.
30. The value of the benefit to victims and witnesses, and to wider society is also sensitive to the value of the services the funding is spent on. We assume that £1 of spending is worth £1. However, the true social value could be higher or lower than this.
31. The impact on the CPS is sensitive to whether the Surcharge is ordered on all offenders dealt with by means of a conditional discharge. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero). The impact on the CPS is also sensitive to the compliance rate (the proportion of offenders who pay without any enforcement being undertaken) with costs orders falls as a result, and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions (see below). The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.
32. The impact on HMCTS depends on the scale of any increase in non-compliance, and its response.
33. The impact of an increase in HMCTS's workload depends on resourcing decisions. There are four broad possible responses by HMCTS enforcement (which are not mutually exclusive):

- I. no response – HMCTS could simply not enforce any Surcharges that were not complied with, or any cost orders that were no longer complied with as a result of the introduction of the Surcharge. There would be no additional costs to HMCTS under this scenario and no impacts on the collection of other financial impositions. However, the payment rate for the Surcharge and costs would be lower than it might otherwise be.
 - II. increase overall resources spent on enforcement – this would have a direct impact on MoJ (HMCTS) costs. However, it would mean there would be no impacts on the collection of other financial impositions, and the payment rate for the Surcharge and costs would be higher than if there was no response.
 - III. no increase in overall resources spent on enforcement, but a transfer of resources from other areas of work to enforce the Surcharge on conditional discharges – there would be no additional direct costs to HMCTS under this scenario. However, the amount collected from other financial impositions would fall, with possible impacts for a range of groups. The payment rate for the Surcharge and costs would be higher than if there was no response.
 - IV. use existing resources more efficiently – there would be no additional costs to HMCTS under this scenario. There would also not necessarily be any impact on the collection of other financial impositions and the payment rate for the Surcharge and costs would be higher than if there was no response. It is not clear how much scope there is for increased efficiency, or how likely it is that the introduction of this Surcharge would prompt increased efficiency.
34. The impacts of the reforms are sensitive to changes in crime rates and sentencing policies and patterns. We have assumed that the number of conditional discharges handed down remains at its 2011 level. However, changes to sentencing patterns may affect the number of conditional discharges. It is also possible that the Surcharge might have a deterrent effect. In addition, the demographic profile of those given Surcharges may change, which could affect the compliance and payment rates. Moreover, if the use of compensation orders for those given a conditional discharge increases, less revenue may be collected from the Surcharge (as compensation takes priority and the Surcharge may be reduced to zero if the Court considers the offender can't afford both).
35. The impacts of the reform are also sensitive to any independent changes in HMCTS enforcement practices.
36. The impacts of the reform are also sensitive to any changes in the use of compensation orders by sentencers, as compensation take priority for payment over other impositions.

a(ii) Make the Surcharge payable in cases where a court deals with an adult offender by way of a fine at 10% of the fine value, with a minimum amount of £20 and a maximum cap for the Surcharge ordered on fines at £120.

Costs

Costs to MoJ (including HMCTS and NOMS):

37. There are a number of possible costs to the MoJ:

- I. To the extent that an increased Surcharge increases overall impositions on offenders, we would expect there to be a fall in compliance rates and therefore an increase in the financial penalty enforcement workload.
- II. Depending on the response of sentencers, any fall in compliance could also result in an increase in the number of people committed to prison for fine default. This would increase NOMS's workload. The proportion of offenders currently committed to prison for fine default is very small,⁶ and a term in default of payment tends only to be used for persistent, wilful defaulters. If the increase in impositions were relatively small, we would expect any impact to be small.
- III. Data on the payment rate for fines at present is limited - and the evidence we have indicates that it fluctuates. The ratio of the value of fines collected to the value of fines imposed was around 65% in 2009/10 and around 75% in 2010/11 and around 85% in 2011.⁷ These can only be treated as approximate payment rates as not all the fines collected in a year will have been imposed in that year. Given this, we assume a baseline payment rate of around 75%. In addition, it is possible that the increase in the Surcharge may have a deterrent effect. In order to estimate impacts we assume a payment rate of 70%. This may be conservative as the Surcharge takes priority over fines for collection. In addition, the Surcharge can only be reduced when compensation is also ordered and the offender is unable to pay both. The MoJ retains a proportion of fine revenue collected by HMCTS over a certain collection rate. Therefore to the extent that an increased Surcharge reduces the value of fines imposed and/or collected, the MoJ's income will fall. We have no evidence to help us to predict the scale of these effects.

Costs to HM Treasury

38. Any fall in the amount of fines imposed and/or collected will reduce the amount of revenue available for other government spending.

Costs to the CPS (and other prosecutors)

39. There may be a cost to the CPS (and other prosecutors). The Surcharge takes priority over costs both at the point of sentence and in the application of payments received from the offender. The Surcharge may inhibit courts from ordering costs against the offender at all, and when they do, these might be at a lower level. An increase in the Surcharge amount may therefore reduce the amount of costs imposed and due to the Surcharge taking priority over discharging costs ordered by the court there may also be reduced costs paid to the CPS (and other prosecutors). We do not have sufficient information on the value of cost orders imposed and discharged available to estimate the likely scale of this impact.

⁶ In 2011, 1,133 people in total were sentenced to prison for fine default and, on average, at any one time there were about 130 people in prison for fine default (Offender Management Statistics Quarterly Bulletin: October to December 2011, England and Wales, Ministry of Justice).

⁷ Data is not yet available for the full financial year 2011/12.

40. This maximum impact would occur if no offenders paid any more in financial impositions in total – either because their fines/costs were reduced or because they didn't pay any increase. If we assume:
- I. the number of fines is the same as in 2011 (846,500 fines were handed down to offenders over 18) and the distribution of fine values also stays the same
 - II. the payment rate is around 70% (see above)
 - III. the payment rate is consistent across fines of different values

then we would expect total Surcharge revenue from fines to be around £15m per year. The current £15 Surcharge raises around £10m per year. Therefore we would expect an increase in Surcharge revenue of £5m from this reform. It follows that the maximum impact on combined fine and cost revenue of this reform would be **£5m**.

41. There could be no impact on fine/cost revenue. This would occur if sentencers didn't adjust fines/costs down for the new Surcharge and HMCTS were able to increase collection enough to keep the payment rate constant.

Other costs to MoJ (HMCTS and NOMS)

42. To the extent that an increased Surcharge increases overall impositions on offenders, we would expect there to be a fall in compliance rates. This could
- I. increase the financial penalty enforcement workload and;
 - II. depending on the response of sentencers, result in an increase in the number of people committed to prison for fine default. The proportion of offenders currently committed to prison for defaulting on financial impositions is very small,⁸ and the committal to prison in default tends only to be used for persistent, wilful defaulters. We think any impact is likely to be small.
43. There might be an additional administrative cost due to the additional complexity of imposing a variable Surcharge rather than a single flat rate. However, no additional IT investment would be required so we expect any impact to be small.

Benefits

Benefits to Victims

44. The reform will result in an increase in spending on services for victims. Based on the calculations above, our central estimate is that the reform will increase revenue for victims' services by £5m (to the nearest £1m). As there is considerable general uncertainty around the impact of these reforms, we also calculate a lower estimate based on applying 20% optimism bias. Therefore, to the nearest £1m we estimate a range for the annual benefit to victims of £4m - £5m
45. We assume that it will take 6 - 18 months from implementation for the reform to have its full impact. The average time from offence to sentencing is around 6 months. In at least some cases there will then be a further delay before the Surcharge is collected.

⁸ In 2011, 1,133 people in total were sentenced to prison for fine default and, on average, at any one time there were about 130 people in prison for fine default (Offender Management Statistics Quarterly Bulletin: October to December 2011, England and Wales, Ministry of Justice).

Benefits to providers and potential providers of support services

46. Providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.

Benefits to Wider society

47. If the increase is perceived by the public as bringing the system closer to one in which offenders take responsibility and make greater financial reparation for their actions, there may be benefits in terms of fairness/public confidence in the justice system. Setting the Surcharge as a percentage of a fine aims to ensure that the level of contribution offenders make to the cost of supporting victims of crime is proportionate to the sentence. Proposing that the Surcharge ordered on fines is subject to a £20 minimum and £120 maximum seeks to ensure fairness, by providing that the lowest available Surcharge on fines would be greater than that for a conditional discharge, but still keeping the maximum within the bounds of what is reasonable.

Net Impact, sensitivities and risks

48. We expect this reform to increase the amount of revenue collected for victims' services. We also expect it to decrease the amount of fine and court ordered costs revenue collected. We estimate that the net impact could lie anywhere between £0m - £5m per annum. We also expect the reform to increase HMCTS's enforcement workload.
49. The impacts of this reform are sensitive to the payment rate, including to any variations in the payment rate across fine values. The estimates assume a payment rate of 70% across all fine values. However, it is possible that there could be variation. Under this reform those who get larger fines will also receive larger Surcharges, if the payment rate is different for high value than for low value fines, revenue will be different.
50. The impacts are also highly sensitive to the responses of sentencers and offenders to an increase in the Surcharge, and to the response of HMCTS enforcement.
51. No extra revenue would be collected if sentencers reduced fines and/or costs ordered against defendants to fully absorb the increase in the Surcharge. More generally, the net increase in revenue will be lower the more sentencers reduce fines and costs in response to the increased Surcharge.
52. Similarly, no additional revenue would be collected if, despite an increase in overall impositions, it proved impossible to collect any more revenue from offenders. More generally, the net increase in revenue will be lower the less additional revenue it proves possible to collect from offenders.
53. The value of the benefit to victims and witnesses, and to wider society is also sensitive to the value of the services the funding is spent on. We assume that £1 of spending is worth £1. However, the true social value could be higher or lower than this.
54. If overall impositions increase, we expect at least some decrease in the compliance rate for financial impositions. This will increase the enforcement workload. The overall impact of the reforms on victims, the MoJ, HM Treasury

and the CPS depend on resourcing decisions made in response. The main possibilities (which are not mutually exclusive) are:

- I. no response – HMCTS could simply not enforce any Surcharges that were not complied with, or any cost orders that were no longer complied with as a result of the introduction of the Surcharge. There would be no additional costs to HMCTS under this scenario and no impacts on the collection of other financial impositions. However, the payment rate for the Surcharge and costs would be lower than it might otherwise be.
 - II. an increase overall on resources spent on enforcement – this would have a direct impact on MoJ (HMCTS) costs. However, it would mean there would be no impacts on the collection of other financial impositions, and the payment rate for the Surcharge and court ordered costs would be higher than if there was no response.
 - III. no increase in overall resources spent on enforcement, but a transfer of resources from other areas of work to enforce the Surcharge on fines – there would be no additional direct costs to HMCTS under this scenario. However, the amount collected from other financial impositions would fall, with possible impacts for a range of groups. The payment rate for the Surcharge and costs would be higher than if there was no response.
 - IV. more efficient use of existing resources – there would be no additional costs to HMCTS under this scenario. There would also not necessarily be any impact on the collection of other financial impositions and the payment rate for the Surcharge and costs would be higher than if there was no response. It is not clear how much scope there is for increased efficiency, or how likely it is that the introduction of this Surcharge would prompt increased efficiency.
55. The impact of the reform is also sensitive to changes in crime rates and sentencing policies and patterns. Changes to sentencing patterns may affect the number of fines handed down. The increase in the Surcharge may itself have a deterrent effect. In addition, the demographic profile of those given fines may change, which could affect the compliance and payment rates. Moreover, if the use of compensation orders for those given fines increases, less revenue may be collected from the Surcharge (as compensation takes priority).
56. The impacts of the reforms are also sensitive to any independent changes in HMCTS enforcement practices.

a(iii) Make the Surcharge payable in cases where a court deals with an adult offender by way of an adult community sentence at a flat rate of £60.

Costs

Costs to MoJ (including HMCTS)

57. There will be an increase in HMCTS' enforcement workload for two reasons. Some of those who currently get a costs or compensation order with their

community sentence and comply with it may not comply with their new, higher imposition which would include the Surcharge. In addition not all of those who get adult community sentences currently get any kind of financial imposition. It is likely that some of these will not comply with their Surcharge. We are not able to predict the scale of this impact as we do not know how these offenders will respond to a new imposition.

58. There may also be an impact on fine revenue to the MoJ. In some cases an offender is given a fine as a secondary disposal alongside their community sentence. In this case, only one Surcharge would be imposed – whichever is the larger of the Surcharge that would have been payable on the fine or the community order. This reform, therefore, could increase the Surcharge paid by those sentenced to fines. This could reduce the amount of fine revenue collected (either because sentencers imposed lower fines to (partially or fully) absorb the additional Surcharge, or because fewer of the fines imposed were collected by HMCTS).

Costs to HM Treasury

59. Any impact on fine revenue would also impact on HM Treasury by reducing the amount of revenue available for other government spending.

Costs to the CPS (and other prosecutors)

60. There may be a cost to the CPS and other prosecutors. The Surcharge takes priority over costs both at the point of sentence and in the application of payments received from the offender. The Surcharge may inhibit courts from ordering costs against the offender at all, and when they do, these might be at a lower level. The extension of the Surcharge may therefore reduce the amount of costs imposed and due to the Surcharge taking priority over discharging cost orders once the offender's payments are received in the court there may also be reduced costs paid to the CPS (and other prosecutors). Information on the value of cost orders imposed and discharged is not collected, so we are not able to predict the likely scale of this impact.

Benefits

Benefits to victims

61. The reform will result in an increase in spending on services for victims. We do not have direct information on the likely payment rate of a Surcharge on adult community sentences. We have some early, indicative evidence that suggests that offenders sentenced to community sentences may have lower means than those given fines.⁹ However, HMCTS expect that a Surcharge on community sentences would be easier to collect than one on fines as offenders sentenced to community sentences are more likely to attend court, and so are easier to trace if enforcement is required. In light of these considerations, we assume a payment rate for a Surcharge on community sentences that is somewhat lower than that assumed for the Surcharge on fines: 60%.

⁹ "Offending, employment and benefits - emerging findings from the data linkage project": <http://www.justice.gov.uk/publications/statistics-and-data/ad-hoc/index.htm>

62. In 2011, 132,400 community sentences were handed down to offenders over 18. At a payment rate of 60%, we would expect this reform to increase revenue for victims' services by about £5m (to the nearest £1m). As there is considerable general uncertainty around the impact of these reforms, we also calculate a lower estimate based on applying 20% optimism bias. To the nearest £1m, therefore, we estimate an annual benefit to victims of £4m - £5m.
63. We assume that it will take 6 - 18 months from implementation for the reform to have its full impact. The average time from offence to sentencing is around 6 months. In at least some cases there will then be a further delay before the Surcharge is collected.
64. Victims may value offenders taking greater responsibility for their crimes and doing more to repair the damage caused.

Benefits to providers and potential providers of support services

65. Providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.

Benefits to wider society

66. If the extension is perceived by the public as bringing the system closer to one in which offenders take responsibility and make greater financial reparation for their actions, there may be benefits in terms of fairness/public confidence in the justice system – especially as community sentences tend to be given for more serious offences than fines.

Net Impact, sensitivities and risks

67. This reform will increase revenue for victims' services – in this case by around £5m. It may have a negative impact on court ordered costs revenue and on fine revenue to the MoJ and HM Treasury, though as not all those who will be ordered to pay the Surcharge are currently ordered to pay costs or fines, the impact on cost and fine revenue is unlikely to be large enough fully to offset the increase in Surcharge revenue. It will also have an impact on HMCTS' enforcement workload.
68. The impacts of the reforms on victims and on the CPS (and other prosecutors) are highly sensitive to the responses of sentencers, of offenders to paying the Surcharge and of HMCTS enforcement.
69. The impact on victims is sensitive to whether the Surcharge is ordered on all offenders dealt with by means of an adult community sentence. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero)., The impact on victims is also sensitive to the compliance rate for the Surcharge (the proportion of offenders who pay without any enforcement being undertaken) and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions. The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue..)

70. We have assumed a payment rate of 60%, but this is highly uncertain.
71. The value of the benefit to victims and witnesses, and to wider society is also sensitive to the value of the services the funding is spent on. We assume that £1 of spending is worth £1. However, the true social value could be higher or lower than this.
72. The impact on the CPS is sensitive to whether the Surcharge is ordered on all offenders dealt with by means of an adult community sentence. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero). The impact on the CPS is also sensitive to the compliance rate (the proportion of offenders who pay without any enforcement being undertaken) with costs orders falls as a result, and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions (see below). The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.
73. The impact on HMCTS depends on the scale of any increase in non-compliance, and its response.
74. If overall impositions increase, we expect at least some decrease in the compliance rate for financial impositions. This will increase the enforcement workload. The overall impact of the reforms on victims, the MoJ, HM Treasury and the CPS depend on resourcing decisions made in response. The main possibilities (which are not mutually exclusive) are:
- I. no response – HMCTS could simply not enforce any Surcharges that were not complied with, or any cost orders that were no longer complied with as a result of the introduction of the Surcharge. There would be no additional costs to HMCTS under this scenario and no impacts on the collection of other financial impositions. However, the payment rate for the Surcharge and costs would be lower than it might otherwise be
 - II. an increase overall in resources spent on enforcement – this would have a direct impact on MoJ (HMCTS) costs. However, it would mean there would be no impacts on the collection of other financial impositions, and the payment rate for the Surcharge and costs would be higher than if there was no response
 - III. no increase in overall resources spent on enforcement, but a transfer of resources from other areas of work to enforce the Surcharge on adult community sentences – there would be no additional direct costs to HMCTS under this scenario. However, the amount collected from other financial impositions would fall, with possible impacts for a range of groups. The payment rate for the Surcharge and costs would be higher than if there was no response
 - IV. more efficient use of existing resources – there would be no additional costs to HMCTS under this scenario. There would also not necessarily

be any impact on the collection of other financial impositions and the payment rate for the Surcharge and costs would be higher than if there was no response. It is not clear how much scope there is for increased efficiency, or how likely it is that the introduction of this Surcharge would prompt increased efficiency.

75. The impact of the reform is also sensitive to changes in crime rates and sentencing policies and patterns. Changes to sentencing patterns may affect the number of adult community sentences handed down. The Surcharge may have a deterrent effect.
76. In addition, the demographic profile of those given adult community sentences may change, which could affect the compliance and payment rates. Moreover, if the use of compensation orders for those given community sentences increases, less revenue may be collected from the Surcharge (as compensation takes priority both at the point of sentence and for enforcement).
77. The impacts of the reforms are also sensitive to any independent changes in HMCTS enforcement practices.

a(iv) To extend the Surcharge to custodial sentences (for over 18s), including suspended sentences, at £80 for sentences of 6 months and below; at £100 for sentences of over 6 months and up to and including 2 years; at £120 for sentences over 2 years.

Costs

Costs to MoJ (including HMCTS and NOMS)

78. There will be three sources of costs to MoJ:
 - I. an increase in HMCTS's enforcement workload. Financial penalties are seldom imposed on offenders subject to immediate custodial sentences. The reform assumes that the Surcharge could not be discharged as additional time in prison. Focus on collection of the Surcharge will be initially at the point of sentencing and upon release, whilst exploring options for offenders to pay while serving their sentence. We are not able to predict how offenders will respond to the new imposition – and therefore the scale of this impact.
 - II. in the small number of cases where fines are imposed on those offenders sentenced to immediate custody or a suspended sentence, there could be an impact on fine revenue. At present, the flat rate £15 Surcharge on fines would apply to those sentenced to custody and a fine. Under this reform the Surcharge that would apply to the custodial sentence may be larger than that that would apply to the fine. In this case, the Surcharge imposed would be the one that applies to the custodial sentence – so the Surcharge would be higher. Sentencers may reduce the amount of fine imposed to (fully or partially) absorb any increase in the Surcharge, or there may be a reduction in the payment rate for fines (as the Surcharge takes priority). Again, we are not able to estimate the scale of this impact. As the number of offenders likely to be affected is small, it is likely to be small.

- III. there may be costs associated with the collection of Surcharge payments from offenders sentenced to immediate custody.

Costs to HM Treasury

79. Where fines are ordered to those sentenced to immediate custody or a suspended sentence, there could be an impact on fine revenue. Sentencers may reduce the amount of fine imposed to (fully or partially) absorb the Surcharge, or there may be a reduction in the payment rate for fines (as the Surcharge takes priority for enforcement). This is more likely to apply to suspended sentences than immediate custody. The proportion of fines not retained by MoJ goes to HM Treasury.

Costs to the CPS (and other prosecutors)

80. The Surcharge takes priority over costs both at the point of sentence and in the application of payments received from the offender. Offenders subject to custodial sentences may be ordered to pay costs, although this is more likely with a suspended sentence. The Surcharge may inhibit courts from ordering costs against the offender at all, and when they do, these might be at a lower level. The extension of the Surcharge may therefore reduce the amount of costs imposed and due to the Surcharge taking priority over discharging cost orders when received in the court there may also be reduced costs paid to the CPS and other prosecutors. Information on the value of cost orders imposed and discharged is not available, so we are not able to estimate the likely scale of this impact. These costs are also likely to be higher the higher the value of the Surcharge.

Benefits

Benefits to victims

81. This reform will increase revenue for victims' services.
82. We do have direct information on the likely payment rate for a Surcharge on offenders sentenced to immediate custody or suspended sentences. We assume that offenders sentenced to immediate custody have a payment rate of 40% (compared to an assumption of 70% for fines). We assume that offenders sentenced to suspended sentences have a similar profile to those sentenced to community orders, and assume the same payment rate as was assumed for this group – 60%.
83. A total of 98,600 custodial sentences were handed down to offenders over 18 in 2011. 54,600 were prison sentences of 6 months and below, 25,700 over 6 months up to and including two years, 18,300 were sentences over 2 years. In addition, 47,800 suspended sentences were handed down. We assume that, as in 2010, around 60% of these suspended sentences were for 6 months or less.
84. We assume the volumes of custodial sentences remain at 2011 levels in future. On this basis, we estimate that this reform could raise additional revenue of up to £6m, once fully operational. On this basis, and assuming similar numbers of offenders are sentenced to immediate custodial sentences and suspended sentences of various lengths, we estimate that this reform could raise additional revenue of up to £6m, once fully operational. As there is considerable general uncertainty around the impact of these reforms, we also

calculate a lower estimate based on applying 20% optimism bias. To the nearest £1m, therefore, we estimate an annual benefit to victims of £5m - £6m.

85. We assume the reform to suspended sentences will take 6 – 18 months to have its full impact. We assume that it will take 30 months from implementation for the reform to immediate custodial to have its full impact for Crown Court sentences, and 18 months for magistrates court sentences.. This is longer than is assumed for other reforms as some offenders may pay at the point of sentence. Collection from other offenders may occur whilst serving their sentence or upon release. Implementation will be delayed for offenders sentenced to immediate custody in the magistrates' court. Currently magistrates' courts (but not the Crown Court) would have the power to add additional days to a sentence of immediate imprisonment in default of the Surcharge. We will not extend the Surcharge to immediate custodial sentences ordered in the magistrates' court until we have legislated to remove this power.
86. Victims may also value the most serious offenders taking greater responsibility for their crimes and doing more to repair the damage caused.

Benefits to providers and potential providers of support services

87. Providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.

Benefits to wider society

88. If the extension is perceived by the public as bringing the system closer to one in which offenders pay for their actions, there may be benefits in terms of fairness/public confidence in the justice system – especially as custodial sentences tend to be given for the most serious offences

Net Impact, sensitivities and risks

89. This reform will increase revenue for victims' services. Our indicative estimate of this increase is £6m. It may have a negative impact on the CPS (and other prosecutors) and on MoJ and HM Treasury revenue from fines. However, as not all those who will be ordered to pay the Surcharge are currently given fines as well as their custodial sentence or ordered to pay costs, the impact on combined costs and fine revenue is unlikely to be large enough fully to offset the increase in Surcharge revenue. We also expect an increase in HMCTS' enforcement workload.
90. The impacts of the reforms on victims, MoJ and HM Treasury fine revenues and the CPS (and other prosecutors) are highly sensitive to the responses of sentencers, of offenders to paying the Surcharge and of HMCTS enforcement.
91. The impact on victims is sensitive to whether the Surcharge is ordered on all offenders dealt with by means of an adult custodial sentence. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero)., The impact

on victims is also sensitive to the compliance rate for the Surcharge (the proportion of offenders who pay without any enforcement being undertaken) and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions. The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.

92. We have assumed that 60% of those given suspended sentences will pay, and 40% of those sentenced to immediate custody. However, there is significant uncertainty around these assumptions.
93. The value of the benefit to victims and witnesses, and to wider society is also sensitive to the value of the services the funding is spent on. We assume that £1 of spending is worth £1. However, the true social value could be higher or lower than this.
94. The impact on the CPS is sensitive to whether the Surcharge is ordered on all offenders dealt with by means of an adult custodial sentence. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero). The impact on the CPS is also sensitive to the compliance rate (the proportion of offenders who pay without any enforcement being undertaken) with costs orders falls as a result, and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions (see below). The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.
95. The impact on HMCTS depends on the scale of any increase in non-compliance, and its response.
96. If overall impositions increase, we expect at least some decrease in the compliance rate for financial impositions. This will increase the enforcement workload. The overall impact of the reforms on victims, the MoJ, HM Treasury and the CPS depend on resourcing decisions made in response. The main possibilities (which are not mutually exclusive) are:
 - I. no response – HMCTS could simply not enforce any Surcharges that were not complied with, or any fines or cost orders that were no longer complied with as a result of the introduction of the Surcharge. There would be no additional costs to HMCTS under this scenario and no impacts on the collection of other financial impositions. However, the payment rate for the Surcharge and costs would be lower than it might otherwise be
 - II. an increase overall resources spent on enforcement – this would have a direct impact on MoJ (HMCTS) costs. However, it would mean there would be no impacts on the collection of other financial impositions, and the payment rate for the Surcharge and fines and costs imposed alongside custodial sentences would be higher than if there was no response

- III. no increase in overall resources spent on enforcement, but a transfer of resources from other areas of work to enforce the Surcharge on custodial sentences – there would be no additional direct costs to HMCTS under this scenario. However, the amount collected from other financial impositions would fall, with possible impacts for a range of groups. The payment rate for the Surcharge and court ordered costs would be higher than if there was no response
 - IV. more efficient use of existing resources – there would be no additional costs to HMCTS under this scenario. There would also not necessarily be any impact on the collection of other financial impositions and the payment rate for the Surcharge and costs would be higher than if there was no response. It is not clear how much scope there is for increased efficiency, or how likely it is that the introduction of this Surcharge would prompt increased efficiency.
97. The impact of the reforms is also sensitive to changes in crime rates and sentencing policies and patterns. Changes to sentencing patterns may affect the number of suspended sentences and immediate custodial sentences handed down. In addition, the demographic profile of those given suspended sentences and immediate custodial sentences may change, which could affect the compliance and payment rates. Moreover, if the use of compensation orders for those given suspended sentences and immediate custodial sentences increases, less revenue may be collected from the Surcharge (as compensation takes priority).
98. The impact of this policy will also be dependant on the impact in the implementation of the Prisoners' Earning Act 1996 and the measures to deduct earnings from a wider group of prisoners contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These may leave offenders less able to pay any Surcharge.
99. As set out in the Note on Timing above, the extension of the Surcharge to offenders sentenced to custody in the magistrates' court will be implemented after the extension to the Crown Court (expected to be summer 2014 rather than October 2012). We assume that the behaviour of offenders in triable either way cases who currently elect to go to the Crown Court does not change during this transitional period, so the volume of offenders receiving custodial sentences in different courts does not change. If fewer offenders elected to go to the Crown Court, Surcharge revenue during the transition period might be lower. In addition, there could be temporary impacts on HMCTS, Legal Aid, the CPS and NOMS. We are not able to quantify these potential impacts, but they are outlined in the next paragraph.
100. If more offenders were to choose to be tried in the magistrates' court, there may be costs to the magistrates' courts through a greater number of cases being dealt with there. There may also be savings in time to HMCTS as cases prosecuted through the magistrates' court are shorter than Crown Court proceedings. There are potential legal aid savings if more cases are paid at the rates for magistrates' courts proceedings which are significantly lower than the rates paid for cases in the Crown Court. Similarly there may be savings to the CPS. The extent of any costs or savings depends not only on the behaviour of offenders but also on whether there is backfilling at the Crown Court (i.e. cases waiting to be heard are brought forward to replace any that move to the magistrates' court). If there is complete backfilling, there

will not be any savings, but other Crown Court cases will have been processed more quickly. Lastly, there may be differences between sentences handed down in the magistrates' court and the Crown Court (within the magistrates' court sentencing powers). The evidence is not unequivocal, but if there were to be an increase in sentence lengths for these offenders, there would be a cost to NOMS. Note that any impacts would be temporary

101. The impacts of the reform are also sensitive to any independent changes in HMCTS enforcement practices.

b) Make the Surcharge payable when a court deals with a juvenile offender by way of:

- i. a conditional discharge at a rate of £10;**
- ii. a fine or community sentence at a rate of £15;**
- iii. a custodial sentence of any length at a rate of £20;**

Costs

Costs to MoJ (including HMCTS)

102. The majority of sentences imposed on juvenile offenders do not include a financial element; the Surcharge would be a new (and often, the only) financial imposition. We are not able to predict the scale of this impact as these offenders do not currently receive financial impositions. The uncertainties around the response to an increase in HMCTS' enforcement workload set out under the reforms above apply here too.

103. This reform applies a flat rate Surcharge across custodial sentences, community sentences (including youth rehabilitation orders, referral orders and reparation orders), fines and conditional discharges. HMCTS will have to administer the Surcharge on juvenile offenders separately from that on adult offenders, as it will be a different amount. HMCTS may therefore incur additional administrative costs.

Costs to the CPS (and other prosecutors)

104. The Surcharge will take priority over costs both at the point of sentence and for payment. There may therefore be a reduction in costs ordered against and paid by juvenile offenders as a result of introducing the Surcharge.

Costs to Local authorities

105. Where the juvenile offender is looked-after and is under the age of 16, the local authority will generally become responsible for paying the Surcharge. The court has a discretion to order the local authority to pay the Surcharge in respect of juvenile offenders aged 16 or over in its care. There is evidence to suggest that a substantial proportion of children in custody may be looked-after,¹⁰ though data on juveniles sentenced to other types of disposal is not available. We are therefore not able to estimate the scale of this impact.

¹⁰ The report by Berelowitz, S and Hibbert 'P 'I think I must have been born bad' report for the Office of the Children's Commissioner into the mental health and emotional wellbeing of children in custody (2011) found that 33% have been in care.

Costs to Parents of juvenile offenders

106. Where the juvenile offender is under the age of 16, the parents or guardian of the juvenile offender will generally become responsible for paying the Surcharge; where the offender is aged 16 or 17, the court has discretion to order the offender's parents or guardian to pay the surcharge. As the court has discretion to order the parents to pay the Surcharge where the juvenile offender is aged 16 or over, we are not able to predict the likely size of this impact.

Benefits

Benefits to victims

107. This reform will increase revenue for victims' services. We do not have direct information on the likely payment rate for a Surcharge payable by juvenile offenders. We therefore assume the same payment rates as assumed above for adult offenders: 70% for conditional discharges; 60% for community orders; and 40% for immediate custodial sentences.

108. In 2011 6,800 conditional discharges, 41,100 community sentences and 4,100 immediate custodial sentences were handed down to juveniles.

109. Assuming these payment rates, and that the numbers of the relevant disposals remains round the 2011 levels, we estimate that this reform will increase revenue available for victims services by **£0.5m**. As there is considerable general uncertainty around the impact of these reforms, we also calculate a lower estimate based on applying 20% optimism bias. To the nearest £0.5m, this has no effect on the estimated annual benefit to victims, but it does affect the estimated 10 year present value of the benefits.

110. We assume that it will take 6 - 18 months from implementation for the reform to have its full impact. The average time from offence to sentencing is around 6 months. In at least some cases there will then be a further delay before the Surcharge is collected.

111. Victims may also value offenders taking greater responsibility for their crimes and doing more to repair the damage caused.

Benefits to providers and potential providers of support services

112. Providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.

Benefits to wider society

113. There may be a societal benefit from a wider range of offenders contributing to the costs of victims' services.

Net Impact, key assumptions, sensitivities and risks

114. This reform will increase revenue for victims' services. We estimate this increase at £0.5m. It may have a negative impact on the CPS (and other prosecutors). However, as not all those who will be ordered to pay the Surcharge are currently ordered to pay costs, the impact on cost revenue is unlikely to be large enough fully to offset the increase in Surcharge revenue. We also expect an increase in HMCTS' enforcement workload.

115. The impacts of the reforms on victims, and the CPS (and other prosecutors) are highly sensitive to the responses of sentencers, of offenders to paying the Surcharge and of HMCTS enforcement.
116. The impact on victims is sensitive to whether the Surcharge is ordered on all juvenile offenders dealt with by means of a conditional discharge, community sentence or immediate custodial sentence. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero). The impact on victims is also sensitive to the compliance rate for the Surcharge (the proportion of offenders who pay without any enforcement being undertaken) and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions. The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.
117. The value of the benefit to victims and witnesses, and to wider society is also sensitive to the value of the services the funding is spent on. We assume that £1 of spending is worth £1. However, the true social value could be higher or lower than this.
118. The impact on the CPS is sensitive to whether the Surcharge is ordered on all juvenile offenders dealt with by means of a conditional discharge, community sentence or immediate custodial sentence. We assume it is. The only instance in which it would not be ordered is if compensation is also ordered and the offender is unable to pay both (in which case the court may reduce the amount of the Surcharge if necessary to zero). The impact on the CPS is also sensitive to the compliance rate (the proportion of offenders who pay without any enforcement being undertaken) with costs orders falls as a result, and the response of HMCTS enforcement to an increase in its workload due to non-compliance with the new impositions (see below). The compliance rate and the response of HMCTS will determine the overall payment rate – which is a key determinant of revenue.
119. We have assumed that 70% of those given conditional discharges will pay, 60% of those given community sentence and 40% of those sentenced to immediate custody. However, there is significant uncertainty around these assumptions. Some juveniles may not have means to pay, and some parents ordered to pay may be unwilling to do so.
120. The impact on HMCTS depends on the scale of any increase in non-compliance, and its response.
121. If overall impositions increase, we expect at least some decrease in the compliance rate for financial impositions. This will increase the enforcement workload. The overall impact of the reforms on victims, the MoJ, HM Treasury and the CPS depend on resourcing decisions made in response. The main possibilities (which are not mutually exclusive) are:
- I. no response – HMCTS could simply not enforce any Surcharges that were not complied with, or any cost orders that were no longer complied

with as a result of the introduction of the Surcharge. There would be no additional costs to HMCTS under this scenario and no impacts on the collection of other financial impositions. However, the payment rate for the Surcharge and costs would be lower than it might otherwise be

- II. an increase overall resources spent on enforcement – this would have a direct impact on MoJ (HMCTS) costs. However, it would mean there would be no impacts on the collection of other financial impositions, and the payment rate for the Surcharge (and any costs imposed) would be higher than if there was no response
 - III. no increase in overall resources spent on enforcement, but a transfer of resources from other areas of work to enforce the Surcharge on payable by juvenile offenders – there would be no additional direct costs to HMCTS under this scenario. However, the amount collected from other financial impositions would fall, with possible impacts for a range of groups. The payment rate for the Surcharge and costs would be higher than if there was no response
 - IV. more efficient use of existing resources – there would be no additional costs to HMCTS under this scenario. There would also not necessarily be any impact on the collection of other financial impositions and the payment rate for the Surcharge and costs would be higher than if there was no response. It is not clear how much scope there is for increased efficiency, or how likely it is that the introduction of this Surcharge would prompt increased efficiency.
122. The impact of the reform is also sensitive to changes in crime rates and sentencing policies and patterns. Changes to sentencing patterns may affect the number and profile of sentences handed down to juveniles. In addition, the demographic profile of juvenile offenders given different sentences may change, which could affect the compliance and payment rates. Moreover, if the use of compensation orders for juveniles increases, less revenue may be collected from the Surcharge (as compensation takes priority).
123. The impact of this policy will also be dependant on the measures to deduct earnings from a wider group of prisoners contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These may leave offenders less able to pay any Surcharge.
124. The impacts of the reform are also sensitive to any independent changes in HMCTS enforcement practices.

c) To increase the value of Penalty Notices for Disorder (PNDs) by £10

Costs

Costs to MoJ (HMCTS)

125. There are two possible costs to MoJ (HMCTS)
- I. There may be an increase in the enforcement workload if the increase reduces the payment rate, so that more PNDs are registered as fines.

Typically around 40 per cent of PNDs issued are registered as fines each year.¹¹

- II. There may also be an increase in the court workload if the increase means more individuals opt to be tried in court. However, in 2011 only 1% of PND recipients requested a court hearing. In light of this, we expect any impact to be small in absolute terms.

Costs to HM Treasury

126. Currently PND revenue is paid into the Consolidated Fund; therefore there may be a cost from reduced payment of PNDs if the increase reduces the payment rate. It is important to note that (unlike for court-ordered financial impositions) part payment of PNDs is not possible. Therefore, unlike fines, rather than losing up to the value of the Surcharge in other revenue, a shift from payment to non-payment would result in upfront revenue being reduced by the full £80 (or £50) value of the PND. Some PNDs that are no longer paid upfront may nevertheless be collected once they are registered as fines. This will depend on the enforcement response to any increase in PNDs being registered as fines.

127. We do not have evidence to predict the possible impact of a £10 increase on the payment rate, so do not quantify the likely impact here.

Benefits

Benefits to victims

128. The reform will result in an increase in spending on services for victims. In 2011 121,300 PNDs were issued to over 18s and 54% of PNDs issued were paid in full. The average payment rate since 2005 has been 52%. At a payment rate of 54%, the reform would raise (to the nearest £0.5m) £0.5m for victims' services.¹² If the payment rate fell as a result of the increase, revenue would be lower. As there is considerable general uncertainty around the impact of these reforms, we also calculate a lower estimate based on applying 20% optimism bias. To the nearest £0.5m, this has no effect on the annual estimated benefit, but it does affect the estimated 10 year present value of the benefits.

129. Victims may also value offenders taking greater responsibility for their crimes and doing more to repair the damage caused.

Benefits to providers and potential providers of support services

130. Providers may derive satisfaction from being able to help more victims and witnesses due to increased funding being available.

Benefits to Wider society

131. There may be a societal benefit from a wider range of offenders contributing to the costs of victims' services.

Net impact , key assumptions, sensitivities and risks

¹¹ Criminal Justice Statistics, Quarterly Update to December 2011 (Ministry of Justice)

¹² A 52% payment rate gives the same rounded estimate.

132. The reform will increase revenue for victims' services, by an estimated £0.5m, but may also reduce revenue to the consolidated fund.
133. In principle the net revenue impact could be negative, since where the increase results in an individual who would otherwise have paid their PND upfront not paying it, the loss of upfront revenue is £80 (or £50 for a lower-tier notice). Whether this is subsequently recouped depends on the availability and deployment of enforcement resources.
134. The estimated revenue is based on an assumption that the payment rate is 54%. This was the upfront payment rate for PNDs in 2011. The impacts are sensitive to a number of key variables
- I. the upfront PND payment rate and the impact of the increase on this payment rate
 - II. the proportion of PNDs registered as fines that are enforced currently, and the proportion that would be enforced following any increase
 - III. the number of PNDs issued
135. The value of the benefit to victims and witnesses, and to wider society is also sensitive to the value of the services the funding is spent on. We assume that £1 of spending is worth £1. However, the true social value could be higher or lower than this.
136. The impacts of the reforms are also sensitive to any independent changes in HMCTS enforcement practices.

Specific Impact Tests

Statutory equality duties

An Equality Impact Assessment is included as a separate document with the consultation response.

Competition Assessment

Will the reforms:

1. **Directly limit the number or range of suppliers?** No.

(In principle higher financial impositions as a result of an increase in the Surcharge could cause a company that had committed an offence to go out of business, where it would not have under the "do nothing" scenario.

However, the maximum Surcharge that could be imposed under the reforms is £120. In addition, the sentencing guidelines state that "care should be taken to ensure that fines imposed on smaller companies are not beyond their capability to pay. The court might not wish the fine to result in the company not being able to pay for improved procedures or to cause the company to go out of business".¹³

¹³ Magistrates' Court Sentencing Guidelines, Sentencing Guidelines Council, 2008

Therefore we would expect sentencers to reduce other elements of the imposition rather than allow it to rise as a result of the Surcharge to a level that could result in a business closing.)

2. **Indirectly limit the number or range of suppliers?** No

3. **Limit the ability of suppliers to compete?** No

4. **Reduce suppliers' incentives to compete vigorously?** No

Small Firms Impact Test

The reforms to increase the Surcharge applied to fines is likely to impact upon businesses found guilty of criminal offences. Only quite a small number of fines are given to businesses each year. 6,900 fines were given to “other” offenders in 2011 – whereas ONS data shows there were 2.1m business registered for VAT and/or PAYE in March 2010¹⁴. This category covers businesses but also public sector bodies.

The businesses affected will include small firms and sole traders. However, we do not have any evidence on the size of businesses given fines and so can't be sure whether a disproportionate number of small businesses are likely to be affected compared to their representation in the private sector as a whole.

Whether setting the Surcharge at 10% of the fine, with a minimum of £20 and a £120 maximum Surcharge level is likely to have a larger impact on small businesses than large businesses depends on if small businesses tend to receive fines under or above £1200. If small businesses receive fines of under £1200, then they will not have their Surcharge capped. The proportionate increase in imposition could then be larger for small businesses. However, as mentioned above sentencers are expected to ensure the overall imposition is in line with the offender's ability to pay.

Extending the Surcharge to conditional discharges, community sentences and custodial sentences will affect sole traders who are found guilty of criminal offences and other individuals convicted of offences related to their business activities (e.g. directors of companies).

Increasing the value of PNDs by £10 will impact on any businesses such as sole traders who are given a PND.

Extending the Surcharge to juvenile offenders is unlikely to impact on business as these reforms only affect under 18s.

We do not think it would be appropriate to exempt or adopt an alternative approach for small businesses. In order to be subject to the Surcharge a

¹⁴ <http://www.statistics.gov.uk/cci/nugget.asp?id=1238>

business needs to have committed an offence, and we do not think it appropriate to distinguish between offenders on grounds of whether they are a small business. As noted above, these impacts are not counted in this Impact Assessment as they will only fall on businesses/individuals convicted of criminal offences or who are issued with a PND.

Carbon Assessment

We do not expect these reforms to have an impact on the emission of greenhouse gases.

Other Environment

We do not expect these reforms to have any other environmental impacts

Health Impact Assessment

- Will your policy have a significant impact on human health by virtue of its effects on the following wider determinants of health? : Income; crime; environment; transport; housing; education; employment; agriculture; social cohesion.

There may be an impact on the income of offenders who are sentenced to fines as a result of them receiving a larger Surcharge when fined in court (at least £20, rather than £15 at present). However we do not expect a significant impact as the offender's means are taken into account at the time of sentence. For conditional discharges, community sentences, suspended and immediate custodial sentences we do not believe the level of the Surcharge and increase in the value of PNDs would impact unduly on individuals' income for the reasons given below.

Where an offender's income makes payment of the Surcharge more difficult, HMCTS has a range of enforcement tools which may mitigate this impact. HMCTS would collect the Surcharge in the same manner as existing financial impositions awarded by a court. They have in place a number of payment methods that make it easy for offenders to pay financial impositions, these include payment cards and payment by credit and debit card both online and via a telephone payment line. These payment methods are actively promoted by enforcement teams and offenders are directed to the methods that are most appropriate and convenient for them. There are also payment methods which allow offenders, who are unable to pay in full at once, to pay financial impositions including the Surcharge over a period of time. This includes deduction from benefits orders and attachment of earnings orders which allows the court to deduct payments for outstanding financial penalties from the offenders' benefits or salary.

- Will there be a significant impact on any of the following lifestyle related variables? : Physical activity; diet; smoking, drugs or alcohol use; sexual behaviour; accidents and stress at home or work.

There may be a beneficial impact on the health of victims of crime. Additional funding for services should mean victims receive better support and therefore may experience less stress following the incident.

- Is there likely to be a significant demand on any of the following health and social care services? : Primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services; health protection and preparedness response.

We do not anticipate a significant impact on these variables.

Human Rights

Policy reforms to increase and extend the Victim Surcharge have been developed to conform with the Human Rights Act, in particular with Article 1 Protocol 1 (Protection of Property) of the European Convention on Human Rights.

Justice Impact Test

Impacts are covered in the main IA.

Rural proofing

We do not expect these reforms to have an impact on the circumstances and needs of rural people and places.

Sustainable Development

We do not anticipate that policy reforms will have a negative impact on any of the following principals of sustainable development:

- Living within environmental limits;
- Ensuring a strong, healthy and just society;
- Achieving a sustainable economy;
- Promoting good governance;
- Using sound science responsibly.

The policy reforms should, however, have a positive impact on ensuring a strong, healthy and just society. Offenders bearing a greater proportion of the cost incurred by the state to help fund victims services will contribute to helping victims cope and recover.

Privacy Impact Test (an MoJ Specific Impact Test)

There may be an impact to the operational processes of HMCTS in enforcing the reforms. A Privacy Impact Test will be conducted when required.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review:</p> <p>We will conduct a review of both operational implementation and policy impacts.</p>
<p>Review objective:</p> <p>Operational review after 6 and 18 months to determine whether the changes have been properly implemented, whether there are implementation issues that need addressing and to identify the additional receipts due to these changes.</p> <p>Policy review 3 years after implementation to identify and quantify impacts, including any unintended impacts.</p>
<p>Review approach and rationale:</p> <p>Operational review to be conducted in partnership with HMCTS using data from Libra and qualitative research (court staff, magistrates, Judiciary).</p> <p>Policy review will be commissioned to test the success of the policy objectives and quantify the impacts identified in the Impact Assessment, in particular on HMCTS, HMT and CPS. This will be a mix of qualitative and quantitative research, undertaken by MoJ Analytical Services. Exact requirements will be defined at the time.</p>
<p>Baseline:</p> <p>Surcharge receipts in the full year prior to implementation, the values of fines imposed in that year and the payment rates for fines and PND</p>
<p>Success criteria:</p> <p>Increase in Surcharge revenue, consistent application of the Surcharge limited reduction in other revenue,</p>
<p>Monitoring information arrangements:</p> <p>Sentencing and PND imposition and payment rate data is collected regularly by the MoJ. HMCTS have proposals to improve their data on enforcement, which will make it easier to assess payment rates. No additional data will be required.</p>
<p>Reasons for not planning a PIR: N/A</p>