

Title: Extending Magistrates' Court Sentencing Powers IA No: MoJ029/2022 RPC Reference No: N/A Lead department or agency: The Ministry of Justice (MoJ) Other departments or agencies:	Impact Assessment (IA)			
	Date: 28/04/2022			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Other			
Contact for enquiries: Ella.Miller@justice.gov.uk				

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2022 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£26.7m	£m	£m	Not a regulatory provision

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

The COVID-19 pandemic has imposed unprecedented challenges on the criminal courts adding significantly to the existing backlog of cases. This poses a risk of victims and other court users waiting longer than is acceptable for their cases to be heard. We have already taken measures to increase capacity and improve efficiency in the criminal courts including setting up Nightingale Court rooms, installing plexi-glass screens into 450 courtrooms, and removing the limit on the number of sitting days in the Crown Court, which has helped to reduce the backlog. However, more can be done to improve efficiency in the criminal courts, which is why we are now commencing legislation to extend magistrates' court sentencing powers in order to keep more sentencing hearings in the magistrates' court, so freeing up space in the Crown Court. The government is best placed to resolve this issue because it runs the criminal court system, and only government can commence the existing provisions set out in primary legislation that will enable the extension of magistrates' court sentencing powers.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to deliver swifter access to justice and further assist court recovery, which remains a top priority for the government. Specifically, the objective is to improve efficiency in the criminal courts, reducing the backlog in the Crown Court, and therefore speeding up case completion by retaining more cases in magistrates' courts.

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

Two options have been considered for this Impact Assessment (IA):

- Option 0:** Do nothing: Make no changes to magistrates' court sentencing powers.
- Option 1:** Legislate to extend magistrates' court sentencing powers from a maximum of 6 to 12 months' imprisonment for a single Triable Either Way offence by commencing existing provisions in the Sentencing Act 2020 and Criminal Justice Act 2003.

The preferred option is Option 1, as this best meets the policy objective of retaining more cases in the magistrates' courts and reducing the flow of cases into the Crown Court.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A					
Does implementation go beyond minimum EU requirements?			No		
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

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

Signed by the responsible Minister: James Cartlidge Date: 28/04/2022

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to extend magistrates' court sentencing powers from a maximum of 6 to 12 months' imprisonment for a single Triable Either Way offence by commencing existing provisions in the Sentencing Act 2020 and Criminal Justice Act 2003.

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 26.7

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.1	3.6	30.8

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

There will be a monetised cost to Her Majesty's Courts and Tribunal Service (HMCTS) as the number of defendants sentenced in the magistrates' courts is expected to rise, resulting in a cost of £3.6m per year. There will also be an additional one-off cost to HMCTS of £0.1 to train Legal Advisors on the increased sentencing powers.

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

As cases will be completed more quickly in the magistrates' courts there will be impact on Her Majesty's Prison and Probation Service (HMPPS), with defendants who receive a custodial sentence entering prison sooner. Likewise, freeing up sitting days in the Crown Court will have a similar effect if more cases are heard there. These changes will only bring forward the cost to HMPPS and will not create any additional costs. With cases being retained in the magistrates' court there will be a cost to the providers of legally aided services to defendants, who would have received the Crown Court legal aid fee for sentencing for cases retained but will receive the lower fee in the magistrates' court.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	6.7	57.6

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

The key monetised benefit is to HMCTS, as the number of defendants sentenced in the Crown Court are expected to fall, resulting in an estimated saving of £4.7m per year. There be benefits to the Legal Aid Agency (LAA) if more defendants are sentenced in the magistrates' court, estimated at £2.0m per year.

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

As a greater number of defendants are expected to be sentenced in the magistrates' courts, where cases are relatively cheaper to complete than in the Crown Court, there will be some savings to the CPS. Also, there are benefits to Victims as Crown Court time is expected to be freed up, allowing the Crown Court to handle more serious, indictable offences, allowing swifter access to justice in the Crown Court for victims.

Key assumptions/sensitivities/risks	Discount rate	3.5
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Assumptions: Only sentencing hearings will be affected as this option affects cases heard in the magistrates' court but sent to the Crown Court for sentencing. Given the updated 'Allocation to the Crown Court Guidance and Good Practice', it is assumed that most cases affect by the extended powers should already be retained for trial in the magistrates' court under this guidance. Table 1 in the IA sets out the assumptions on the likelihood of a case being retained by magistrates depending on the sentence given. It is assumed that sentences given by magistrates will be the same as those which would have been given by Crown Court Judges under the Do Nothing option.

Risks: If magistrates' courts sentence more harshly than Crown Court judges for the same case, there will be a downstream impact on prisons. Defendants may elect for a jury trial in the Crown Court at a higher rate or those who are now sentenced in the magistrates' courts may choose to appeal to the Crown Court, reducing Crown Court sitting days saved. The time saved in the Crown Court cannot be effectively utilised to hear more cases.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

A. Background

1. The COVID-19 pandemic has imposed unprecedented challenges on the courts and tribunals in England and Wales. A great number of measures have been taken to increase capacity and improve efficiency in the courts and they are making a difference. The Government has spent over a quarter of a billion pounds on court recovery last financial year, to make buildings safe, roll out new technology for remote hearings and set up Nightingale courtrooms. However, victims and other court users are still having to wait for their cases to be heard, and this is particularly the case in the Crown Court.

Current preliminary pre-trial court proceedings for criminal cases in England and Wales

2. A criminal case enters the criminal court system when a decision is made, usually by the Crown Prosecution Service (CPS), to prosecute an individual or a company (known as 'the defendant' or 'the accused') for the alleged commission of a criminal offence. All criminal cases begin in a magistrates' court.
3. Once a criminal case enters a magistrates' court, magistrates or a district judge (DJ) will deal with the preliminary pre-trial proceedings. The nature of these proceedings will be dependent upon the categories of criminal offences that feature as part of the case, which are specified in law and dictate which criminal courts are able to try and sentence them:
 - a) summary-only (SO) offences, which are the least serious category of criminal offence and carry a maximum penalty of up to 6 months' imprisonment. SO offences can only be tried and sentenced in a magistrates' court¹.
 - b) indictable-only (IO) offences, which are the most serious category of criminal offence and can only be tried by a jury and convicted and sentenced in the Crown Court.
 - c) Triable either-way (TEW) offences, which can be tried and sentenced in either a magistrates' court or the Crown Court. The accused may elect to have it dealt with summarily in the magistrates' court or on indictment (trial by jury) in the Crown Court.
4. Since TEW cases can be tried and sentenced in either a magistrates' court or the Crown Court they represent the area where a policy change could help save Crown Court time by keeping cases in or directing them to magistrates' courts instead. This is because the throughput of cases in the magistrates' court is quicker than that of the Crown Court.

Triable either-way (TEW) offences

5. TEW is a category of criminal offence that can vary in seriousness and includes crimes such as assaults with injuries, possession with intent to supply controlled drugs, and thefts. This category of offence can be tried, convicted, and sentenced in either a magistrates' court or the Crown Court, depending on the complexity of the case, the adequacy of the magistrates' courts sentencing powers, and the wishes of the defendant.
6. The allocation decision procedure normally takes place at the defendant's first magistrates' court hearing during which the court hears details about the case, representations by the prosecution and the defence, and any previous convictions recorded against the accused (as this could affect the appropriate sentence). The magistrates' court then makes the decision as to whether summary trial in the magistrates' court or a jury trial in the Crown Court is more appropriate.
7. This decision is primarily made on the basis of whether the magistrates' court sentencing powers would be adequate in light of any representations made by the parties and the Sentencing Council guidelines issued under s.122(2) of the Coroners and Justice Act 2009. Revised allocation guidelines were published in December 2015 and came into effect from 1st March 2016.² Under section 125(1) of the

¹ A summary-only offence can be tried and sentenced in the Crown Court if it features as part of the same case in another triable either-way or indictable-only offence.

² <https://www.sentencingcouncil.org.uk/wp-content/uploads/Allocation-definitive-guideline-Web.pdf>

Coroners and Justice Act 2009, every court must follow any guidelines unless satisfied that it would be contrary to the interests of justice to do so.

8. The sentences a magistrates' court can hand out include a fine, a community sentence and up to 6 months in prison (or up to 12 months in total for more than one offence). The 'Allocation to the Crown Court Guidance and Good Practice' was updated in February 2021. Magistrates are now advised, subject to issues of complexity, to keep any case which is expected to have a sentence of up to 18 months, although such cases will still currently need to be committed to the Crown Court for sentencing.
9. If the magistrates' reject jurisdiction (i.e. because a jury trial in the Crown Court is more suitable), the defendant is sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998 (CDA 1998). The defendant's consent is not required.
10. If the court decides that summary trial in the magistrates' court is more suitable, the defendant is asked to choose between trial in the magistrates' court and trial in the Crown Court.
11. If the defendant consents to summary trial in the magistrates' court, the trial takes place in the magistrates' court. If the defendant chooses a jury trial in the Crown Court, the defendant is sent to the Crown Court for trial under section 51 of the CDA 1998

Relevant legislation

12. It is intended to commence existing provisions in the Criminal Justice Act 2003 (CJA 2003) and Sentencing Act 2020 (SA 2020) in order to increase magistrates' courts sentencing powers. These provisions will be supplemented by a new power in the Judicial Review and Courts Bill which will allow the government to vary the limit on magistrates' courts sentencing so that it can be reduced back to 6 months (once the provisions to extend the sentencing powers to 12 months has been commenced) if needed. This will allow us to quickly respond to changing circumstances and to mitigate any risks associated with the extension of powers, including the possible impact on prison places.

B. Policy Rationale and Objectives

13. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
14. The rationale for intervention in this case is efficiency in the criminal court system. Increasing the number of cases which can be completed in the magistrates' court will improve timeliness in the Crown Court.
15. The associated policy objective is to deliver swifter access to justice by further assisting court recovery, which remains a top priority for the government. Specifically, the objective is to reduce the backlog in the Crown Court, and therefore speed up case completion, by retaining more cases in magistrates' courts.

C. Affected Stakeholder Groups, Organisations and Sectors

16. A list of all the main groups that will be affected by this proposal is shown below:
 - Defendants who are prosecuted for criminal offences;
 - Victims and witnesses of crime;
 - Her Majesty's Courts and Tribunal Service (HMCTS), which administers the magistrates' courts and the Crown Court;
 - The Crown Prosecution Service (CPS) and other agencies who prosecute criminal offences;
 - Providers of legally aided services, especially barristers and solicitors, to defendants;
 - The judiciary, especially magistrates and District Judges in the magistrates' court, and Judicial College who develop relevant training;
 - Legal Advisers in the magistrates' court;

- The Legal Aid Agency (LAA) who provide financial support to defendants in criminal trials;
- HM Prison and Probation Service (HMPPS) of England and Wales, which includes both the Prison Service and the National Probation Service.

D. Description of Options Considered

17. In assessing the methods for meeting the policy objectives, two options have been considered for this Impact Assessment (IA):

- **Option 0:** Do nothing: Make no changes to magistrates' court sentencing powers.
- **Option 1:** Legislate to extend magistrates' court sentencing powers from a maximum of 6 to 12 months' imprisonment for a single Triable Either Way offence by commencing existing provisions in the Sentencing Act 2020 and Criminal Justice Act 2003.

18. Option 1 is preferred as it best meets the policy objectives.

Option 0

19. Option 0 is undesirable because it will fail to meet the policy objectives of increasing efficiency in the criminal courts and help criminal court recovery.

Option 1

20. As it stands, magistrates' courts are limited to sentences of up to a maximum of 6 months' imprisonment for one offence (and 12 months in total for more than one offence). This option will provide magistrates' and DJs with the power to impose a sentence of up to 12 months' imprisonment for a single triable either way offence. This power will apply to DJs sitting alone and magistrates sitting as a bench of two or three, as they currently do now with other cases. There will be no change to consecutive sentence provisions, the limit of 12-month sentences for two or more offences will not be affected.

21. Provisions in the Criminal Justice Act 2003 (CJA 2003) introduced a new type of sentence, 'custody plus' along with powers which provided for an increase in magistrates' courts sentencing powers. Although the custody plus provisions have been repealed, the powers for magistrates' courts sentencing powers have remained on the statute book, uncommenced. Some of these remain in the CJA 2003 and one is now found in the Sentencing Act 2020 (SA 2020). If commenced, these provisions will allow us to increase magistrates' courts sentencing powers without the need for primary legislation.

22. In order to effect Option 1, we need to commence provisions in both the CJA 2003 and in the SA 2020, so we are making a combined set of commencement regulations which can be described as follows.

23. In the SA 2020, we will commence paragraph 24 of Schedule 22 for TEW offences only (using the powers conferred by s417(1) and s407(6) of the SA 2020). This will increase the maximum sentence that the magistrates' court can give from 6 months to 12 months, for TEW offences only. We will also make an amendment to make clear the effect of this partial commencement. We will use the power in s419 of the SA 2020, so that s224 will provide, on its face, that the maximum is 6 months in respect of any one summary offence, or 12 months in respect of any one TEW offence.

24. In the CJA 2003 we will commence section 282 in its entirety (using the power at s336(3) CJA). This will increase the maximum sentence available on summary conviction for the offences listed in Schedule 1 to the Magistrates' Courts Act 1980 (MCA 1980), and for offences TEW which are not listed in Schedule 1 MCA 1980, and which came into force before or within the same session as the CJA. Offences created after the coming into force of the CJA 2003 will have their sentences increased by virtue of paragraph 24 of Schedule 22 of the SA 2020 coming into force, due to transitional provision on the face of each offence which refers to that provision.

25. We will also commence section 283(1)(b) and (3) CJA 2003. This will allow for amendment of certain enactments which confer powers to create a TEW offence. This will ensure that relevant enactments can be amended so that those powers may be used to reflect the increased sentencing powers of the

magistrates' courts when creating new offences. We also intend to commence similar amendments to existing enabling powers to ensure a consistent approach.

26. Alongside these provisions, we are legislating in the Judicial Review and Courts Bill for a power to vary the limit on the length of sentence that the magistrates' courts may give to either 6 months or 12 months in the future. This will ensure that there is the ability to return to the pre-existing position in the event that any unsustainable impacts materialise.

E. Cost Benefit Analysis

27. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with Her Majesty's Treasury Green Book guidance.

28. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

29. The costs and benefits of the options are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

30. The impacts in this IA have been estimated as follows:

- a) Price base year of 2022/23
- b) 10-year appraisal period beginning 2022/23
- c) Discounting base year of 2022/23
- d) An Optimism Bias of 20% has been applied to the estimated impact on court sitting days

Methodology & Assumptions

31. Following the update in February 2021 to the 'Allocation to the Crown Court Guidance and Good Practice', magistrates are now instructed to keep for trial any case which is expected to have a sentence of up to 18 months. It is therefore assumed that no trials would be affected by this option as they should already be retained under this guidance.

32. As such, the costs and benefits presented below relate solely to sentencing hearings as opposed to trials. By extending magistrates' court sentencing powers from 6 months to 12 months, it is anticipated that a greater number of defendants would now be sentenced in the magistrates' courts rather than the Crown Court. This will lead to savings for HMCTS as a sitting day in the Crown Court is more expensive than a sitting day in the magistrates' courts.

33. This impact is quantified using data from 2019³ on the number of TEW cases in the Crown Court, split by sentence type. It is important to note that this option will not necessarily only affect cases where the Crown Court gave a sentence of between 6 to 12 months. For example, it may be the case that the sentence given to a defendant by the Crown Court was 5 months, but the defendant was committed to the Crown for sentencing as the magistrates' court erred on the side of caution given the proximity to the current 6-month maximum.

34. Table 1 presents the assumptions on the likelihood of a case being retained by magistrates depending on the sentence given. As it is very difficult to anticipate the behaviour of magistrates, the assumptions below are very uncertain. An explanation is provided for each assumption.

Table 1: Likelihood of case being retained by magistrates by sentence given

Sentence	Percentage retained	Explanation
Discharge/fine/Community Sentence	10%	These already fall well within magistrates' powers. It is therefore likely that there is another reason

³ 2019 data is used to avoid figures being skewed by the impact of the Covid-19 pandemic.

		the cases are being committed to the Crown Court so only a small proportion is assumed to be affected.
Immediate Custody/Suspended Sentences		
Up to 3 months	10%	These already fall well within magistrates' powers. It is therefore likely that there is another reason the cases are being committed to the Crown Court so only a small proportion is assumed to be affected.
Over 3 and up to 6 months	80%	Whereas currently magistrates may feel the need to commit cases to the Crown Court as the sentence might be just over the 6-month maximum, under extended powers magistrates will have much more leeway to retain these cases.
Over 6 and less than 12 months	70%	Extended powers will allow magistrates to keep these cases. However, where a sentence is near the higher end, a magistrate may still err on the side of caution. The percentage retained is therefore lower as this cohort of defendants is closer to the new maximum sentence.
12 months	10%	As this is the maximum, magistrates are likely to err on the side of caution and commit the majority of cases to the Crown Court.

35. Approximately 54,000 defendants were sentenced for committing TEW offences in the Crown Court in 2019. Cases where an ancillary order is applicable (i.e. for certain offences where the defendant receives a custodial sentence of 12 months or more) are not within the scope of this option. It is also necessary to account for the Crown Court election rate of 14% as these defendants would continue to be sent to the Crown Court under this option. Accounting for these two points and applying the assumptions in the table above suggests approximately 8,500 cases will be retained by the magistrates' courts.
36. Based on the published average hearing times for TEW Guilty Plea hearings and Committals for Sentence, it is assumed that a sentencing hearing lasts for one hour. The 8,500 cases are therefore equivalent to approximately 1,950 sitting days.
37. These estimates reflect the estimated impact of this option in isolation. There is, however, a new measure being introduced in the Judicial Review and Courts Bill which allows for a case to be remitted back to the magistrates' courts from the Crown Court. In the IA for the measure, the central assumption is that 10% of cases will be sent back to the magistrates' courts. To present the true marginal impact of extending magistrates' court sentencing powers, it is necessary to account for the way in which the two measures interact. It is therefore assumed that 10% of cases would have been sent back to the magistrates' courts anyhow, reducing the number of cases retained to 7,700 and the sitting days figure to 1,750. After applying an optimism bias of 20% the sitting day figure reduces further to 1,400.

Option 1: Legislate to extend magistrates' court sentencing powers from a maximum of 6 to 12 months' imprisonment for a single Triable Either Way offence by commencing existing provisions in the Sentencing Act 2020 and Criminal Justice Act 2003.

Costs of Option 1

Monetised costs

HMCTS

38. Under this option, the number of defendants sentenced in the magistrates' courts is expected to rise, resulting in a cost to the magistrates' courts. As explained above, the impact on the magistrates' courts is estimated to be 1,400 sitting days, resulting in a cost of £3.6m.
39. The Judicial College will also need to train magistrates and HMCTS will need to train legal advisors on the use of increased sentencing powers. The training itself was delivered through low-cost, online means, for example webinars and e-learning packages, therefore the additional cost to Judicial College

and HCMTS for the administering of training is minimal. As magistrates are not paid for their time, there is no cost associated with magistrates carrying out their training. On the basis of 900 Legal Advisors requiring an additional 3 hours of training, with an hourly cost of £30, there will be a one-off cost to HMCTS of £0.1m.

Non-monetised costs

HMPPS

40. As cases move through the magistrates' courts more quickly than the Crown Court, there will be an impact on HMPPS as defendants who receive custodial sentences will enter prison earlier due to the quicker completion of their cases. Freeing up sitting days in the Crown Court may also have a similar effect if cases are completed more quickly there. While this effectively brings costs forward, it does not lead to any additional costs.
41. As there is no robust evidence to suggest otherwise, it is assumed that sentences given by magistrates will be the same as those which would have been given by Crown Court Judges under the Do Nothing option. As such, no change in prison costs is anticipated. There is, however, a risk that this assumption may not hold. This is explored further as part of sensitivity analysis in the Risks and Assumptions section (section F below).

Providers of legally aided services to defendants

42. There will be a cost to providers of legal aid services who would have received the Crown Court legal aid fees for sentencing hearings that are now not heard in the Crown Court, but retained in the magistrates' court where the legal aid fees are lower.

Benefits of Option 1

Monetised benefits

HMCTS

43. Under this option, the number of defendants sentenced in the Crown Court is expected to fall, resulting in a saving to the Crown Court. As estimated above, the impact on the Crown Court is estimated to be 1,400 sitting days, resulting in a saving of £4.7m.

LAA

44. A decrease in the number of defendants sentenced in the Crown Court will result in a saving to the LAA as more cases are heard in the magistrates' court where the cost for the provision of Legal Aid is lower. As estimated above, the impact on the Crown Court will be 7,700 cases.
45. The total number of 'committal for sentence' disposals in 19/20 was 33,500, of which 18,700 were funded by the LAA, representing 56% of the total. Applying this percentage to the 7,700 cases suggests 4,300 would be funded by the LAA.
46. Under this option, some defendants will no longer need to be committed for sentence, resulting in a saving in legal aid spend in the Crown Court. As the average legal aid claim value per 'committal for sentence' is £600, the cost saving across the 4,300 cases is estimated to be £2.6m. As these defendants will now be sentenced in the magistrates' courts, there could be offsetting costs to the LAA in the magistrates' courts if claims move to a higher bracket of fees. However, as this is not possible to determine, the estimated total benefit to the LAA has been rounded down to £2.0m to account for this.

Non-monetised benefits

CPS

47. As a greater number of defendants are expected to be sentenced in the magistrates' courts, where cases are relatively cheaper to complete, rather than the Crown Court, there will likely be some savings to the CPS. Due to a lack of data it has not been possible to quantify this benefit.

Victims, witnesses and defendants

48. Since a greater proportion of TEW cases are expected to be sentenced in the magistrates' courts, this will free up Crown Court time to handle more serious, indictable offences. Cases will therefore be

completed more quickly, allowing swifter access to justice in the Crown Court for victims, witnesses and defendants.

Summary

49. The deflated and discounted monetised costs and benefits of this option are summarised in the table below.

Table 2: Summary of the discounted costs and benefits of Option 1

£m	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	Total
Cost	3.7	3.5	3.3	3.2	3.1	3.0	2.9	2.8	2.7	2.6	30.8
Benefit	6.7	6.5	6.2	6.0	5.8	5.6	5.4	5.3	5.1	4.9	57.6
Net Benefit	3.0	3.0	2.9	2.8	2.7	2.6	2.5	2.4	2.4	2.3	26.7

NPV (£m)	26.7
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F. Risks and Assumptions

Assumptions

50. The key assumptions behind the impacts presented in this IA are described below. There is a risk that, if the assumptions do not hold, the costs and benefits presented in this IA could be higher or lower.

- As the analysis is based on 2019 data, it is assumed that future volumes are similar to 2019 volumes.
- Given the updated 'Allocation to the Crown Court Guidance and Good Practice', it is assumed that only sentencing hearings will be affected as cases should already be retained for trial under this guidance.
- Table 1 in the IA sets out the assumptions on the likelihood of a case being retained by magistrates depending on the sentence given.
- As there is no data on the length of suspended sentences, it is assumed that the sentence length distribution is the same as immediate custodial sentences.
- The Crown Court election rate is assumed to be 14%, in line with 2019 data.
- A sentencing hearing is assumed to last one hour, based on the published average hearing times for TEW GP trials and Committals for Sentence.
- A sitting day is assumed to last 4.4 hours.
- The cost of a sitting day in the Crown Court is approximately £3,300.
- The cost of a sitting day in the magistrates' courts is approximately £2,600.
- It is assumed that sentences given by magistrates will be the same as those which would have been given by Crown Court Judges under the Do Nothing option.
- The average LAA claim value for a committal for sentence case in the Crown Court is approximately £600.

Risks

51. Of the assumptions listed above, the following are the associated with risks which could have the greatest effect on the impacts described in this IA:

- There is a risk that the assumptions set out in table 1 do not hold. If a lower percentage of cases are retained by the magistrates' court this will decrease the sitting day savings in the Crown Court. Likewise, if a greater percentage of cases are retained by the magistrates' court this will increase the sitting day savings in the Crown Court.
- There is a risk that magistrates could sentence more harshly than Crown Court judges for the same case. This is because cases affected by Option 1 will be the most serious the magistrates' courts see, therefore magistrates may seek to sentence at the top of their powers. Conversely, these cases would be the least serious in the Crown Court, therefore the comparative sentences imposed there may be lower. Were this risk to materialise, there would be a downstream impact on prisons. This is explored further in the sensitivity analysis presented below.

- There is a risk that defendants may now choose to elect for a jury trial in the Crown Court at a higher rate, reducing the sitting day savings in the Crown Court.
- There is a risk that defendants who would now be sentenced in the magistrates' courts would choose to appeal to the Crown Court, reducing the sitting day savings in the Crown Court.
- There is a risk that the time saved in the Crown Court cannot be effectively utilised to hear more cases. As sentencing hearings are assumed to last one hour, it may be that cases cannot be listed in such a way so as to make effective use of this time.

Sensitivity Analysis

52. As noted above, given there is no robust evidence to suggest otherwise, it is assumed that sentences given by magistrates will be the same as those which would have been given by Crown Court Judges under the Do Nothing option. There is, however, a risk that this assumption may not hold.
53. Any potential increase in sentencing would lead to an increase in demand for prison places, leading to costs for HMPPS. Given the lack of evidence in this space, there is nothing to suggest, firstly, whether such a risk is likely to materialise and, secondly, the potential extent of any difference in sentencing behaviour. Therefore, two purely *illustrative* examples are presented in Table 3 to show how differential sentencing behaviour could have a cumulative effect on prisons.

Table 3: Illustrative scenarios of impact on prisons from differential sentencing behaviour

Scenario	Additional prison place impact in steady state
Immediate custodial sentences increase by 1 week and a third of suspended sentences now receive immediate custodial sentences of the same length	200
Immediate custodial sentences increase by 2 months and a third of suspended sentences now receive immediate custodial sentences of the same length	550

G. Wider Impacts

Equalities

54. An Equality Impact Statement has been completed and will be published alongside this IA.

Better Regulation

55. These measures are exempt from the Small Business Enterprise and Employment Act 2015 and will not count towards the department's Business Impact Target.

Environmental Impact

56. We expect there to be no environmental impact as a result of Option 1.

H. Monitoring and Evaluation

57. To understand the impact of the extension of magistrates' courts sentencing powers we will monitor and assess any changes to court and prison data after commencement to identify if further action is required or if the 'turning off' power should be used.
58. A new dashboard is in development to enable this, which will monitor the Crown Court backlog, sentencing, average custodial sentence lengths, appeal rates, election rates and prison population rates. Most of this data is, and would continue to be, published quarterly, however much of the data can be pulled monthly from internal datasets. Where data is not currently available monthly, proxy measures will be used to measure impact, and analysts will work to improve the regular data pull. Data at a regional level would be used where available.

59. This data would be analysed and collated into a brief reporting pack which would be collated monthly. This is the most frequently that meaningful data could be released and therefore will give the best chance of identifying impacts of the policy as quickly as possible.
60. We will also set up a small monitoring group composed of relevant policy and analysis personnel from across MoJ and HMCTS. The group would meet monthly to consider the latest reporting pack data, and any other programmes of court recovery work that could impact the data shown in the reporting pack, and recommend if there are any risks and therefore if any action is required to mitigate these risks.