

Title: Police, Crime, Sentencing and Courts Bill 2021: Increasing efficiency and accessibility in the courts and tribunal system IA No: MoJ076/2020 RPC Reference No: N/A Lead department or agency: The Ministry of Justice (MoJ) Other departments or agencies: Her Majesty's Courts and Tribunal Service (HMCTS)	Impact Assessment (IA)			
	Date: 19/02/21			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: katie.dougal@justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2020 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£82.1m	N/A	N/A	Not a regulatory provision

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

The government is taking forward a reform programme to transform the courts and tribunal system, by improving court efficiency and delivering a service which is more accessible and works better for everyone. Currently, some existing court procedures are not flexible enough to benefit from or better utilise advancements in technology. Some profoundly deaf individuals are currently also unable to serve on juries due to restrictions on the use of a British Sign Language (BSL) interpreter. This results in the sub-optimal use of judicial and court resources and places constraints on accessibility to the justice system. Government intervention to implement necessary improvements to the courts and tribunal system is required because existing court procedures are governed by legislation, so any reforms must be made by an Act of Parliament.

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

The policy objectives are to increase the operational efficiency of the courts and tribunal system in England and Wales and thus improve value for taxpayers' money. Our aims include creating a more flexible court system and increasing people's accessibility to justice by modernising the court system and encouraging greater use of modern technology.

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

Option 0: Do nothing. Do not bring forward any legislation.

Option 1: Amend the common law to enable the presence of a British Sign Language (BSL) interpreter in the jury deliberation room to assist profoundly deaf jurors.

Option 2: Extend the statutory functions of Prisoner Escort and Custody Service (PECS) to enable officers to manage Video Remand Hearings (VRH) in police stations.

Option 3: Modify and make permanent temporary provisions in the Coronavirus Act 2020 to:

- extend the use of video and audio hearings and remote participation in hearings in the criminal jurisdiction;
- ensure that video and audio hearings in all jurisdictions can be observed by members of the public but prohibit observers and participants from making unauthorised recordings or transmissions of these proceedings.

The preferred option is Option 1 – 3 inclusive, as this will best meet the policy objectives.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year				
Does implementation go beyond minimum EU requirements?			N/A	
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
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	Non-traded:

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:  Date: 05 July 2021

Summary: Analysis & Evidence

Policy Option 1

Description: Amend the common law to enable the presence of a British Sign Language (BSL) interpreter in the jury deliberation room to assist profoundly deaf jurors.

FULL ECONOMIC ASSESSMENT

Price Base Year 20/21	PV Base Year 20/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised costs by ‘main affected groups’ Evidence from HM Courts and Tribunals Service (HMCTS) suggests the number of people affected will be small. Therefore, given the expected minimal costs associated with this option, the costs have not been monetised.					
Other key non-monetised costs by ‘main affected groups’ HMCTS: The principal cost of this option is that of the provision of interpreters, not only for jury deliberation but also for the duration of the trial as a consequence of profoundly deaf individuals being permitted to serve on a jury. For each profoundly deaf juror, two BSL interpreters will be required at any one time to ensure that they can alternate shifts. A juror typically serves for two weeks at a time. There may be other very minimal costs in ensuring that the court room and jury deliberation room are set up for the interpreters, as well as any interpreter cancellation costs if the relevant juror is not selected or is excused by the Judge as being unsuitable.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised benefits by ‘main affected groups’ It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by ‘main affected groups’ Profoundly Deaf Individuals: This provision will enable profoundly deaf individuals to serve on a jury and engage with a fundamental element of the criminal justice system in the same way as other individuals without a disability.					
Key assumptions/sensitivities/risks				Discount rate (%)	N/A
N/A					

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	

Summary: Analysis & Evidence

Policy Option 2

Description: Extend the statutory functions of Prisoner Escort and Custody Service (PECS) to enable officers to manage Video Remand Hearings in police stations.

FULL ECONOMIC ASSESSMENT

Price Base Year 20/21	PV Base Year 20/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 78.1

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	2	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	7.5		15.0	91.2

Description and scale of key monetised costs by 'main affected groups'
MoJ: When compared to the baseline, there is a cost for PECS resource. More in-depth commercial analysis is required to understand the potential costs of this option as the MoJ/PECS contract will need to be amended. However, an initial estimate suggests that the cost of this additional service will be in the region of £15.0m per year. This provides for approximately 400 PECS staff undertaking both dock officer and co-ordinator roles.

Other key non-monetised costs by 'main affected groups'
While the roll-out of VRHs will require investment in technology and police custody facilities, these costs are not affected by the issue of the management of VRHs. Given the baseline, these costs would be incurred under the Do Nothing option as well as under this option. As the legislation solely concerns the management of VRHs, only the resourcing costs relating to management of VRHs are captured in this IA.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	2	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	13.9		27.8	169.2

Description and scale of key monetised benefits by 'main affected groups'
MoJ/Police: Enabling PECS officers to carry out the custodial role in police stations will enable VRHs to be held in police stations while allowing police resource to be directed elsewhere. When compared to the baseline, there would therefore be economic efficiency benefits to government under this option as police resources would no longer need to be directed towards these tasks. While the level of uptake by the police of any future rollout of VRH without the legislation is uncertain, under the assumed baseline in this IA the benefit to government is estimated to be approximately £27.8m per year based on initial police modelling. We make no assumption as to how this benefit is distributed between MoJ and police as the IA is not concerned with underlying funding arrangements. In reality, without the legislation some or all police forces would not take up VRH in any future rollout.

Other key non-monetised benefits by 'main affected groups'
Police: By freeing up police resource, this option will ensure that police officers can focus their time on tasks which make best use of their skills and training. This will allow police resource to be used in a more effective and efficient way.

Key assumptions/sensitivities/risks	Discount rate
	3.5%

- Under current legislation, the custodial role in any future rollout of VRHs could only viably be staffed by police. As we assume for the purposes of this IA that VRHs will indeed be rolled out at some point in the future, the Do Nothing baseline is therefore considered to be a situation in which they are staffed by police. Consequently, the costs and benefits of Option 2 are compared to this baseline and consider the impact of allowing PECS Officers to staff the VRHs instead of the police. The costs and benefits of VRHs themselves are not considered.
- The PECS cost estimate assumes 400 PECS officers will be required in steady state.
- The police cost estimate is from initial modelling carried out by the police.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Modify and make permanent temporary provisions in the Coronavirus Act 2020 to extend the use of video and audio hearings and remote participation in hearings in the criminal jurisdiction and ensure that video and audio hearings in all jurisdictions can be observed by members of the public but prohibit observers and participants from making unauthorised recordings or transmissions of these proceedings.

FULL ECONOMIC ASSESSMENT

Price Base Year 20/21	PV Base Year 20/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 4.1
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		0.3	3.1	
Description and scale of key monetised costs by ‘main affected groups’					
HMCTS: Capital investment has already begun and is therefore considered to be a sunk cost. The annual resource cost is captured and covers support, service design and hosting costs. Costs apportioned to criminal courts only based on criminal court receipts in the calendar year 2019 as a percentage of all HMCTS receipts.					
Other key non-monetised costs by ‘main affected groups’					
CPS, Police: HMCTS is working to identify the impact of enabling wider use of live video and audio links on these agencies. At this stage, it is not possible to monetise the operational costs of these impacts given the uncertainty. Criminal Courts Users: It is not anticipated that there would be any costs to court users who are unable to participate in video/audio hearings as the judiciary will have the power to direct the extent to which a hearing is heard physically or remotely based on the circumstances.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		0.7	7.2	
Description and scale of key monetised benefits by ‘main affected groups’					
Criminal Courts Users, Legal Service Providers: Individuals will no longer have to travel to court/tribunal, leading to annual saved travel time of approximately £1.1m. There will also be associated savings of £0.2m in the cost of travel. Wider Impacts: The reduction in travel will lead to reduced carbon emissions, estimated to be a benefit of £0.01m.					
Other key non-monetised benefits by ‘main affected groups’					
HMCTS: Allowing hearings to be heard outside of court or in smaller courtrooms will lead to efficiency savings as the estate can be used more effectively. CPS, Police: Increased flexibility and efficiency as individuals such as prosecutors may no longer need to attend a number of different courts in a single day but could take part online from a single location. Criminal Courts Users: Increased accessibility of the justice system. Reduced reliance on physical HMCTS estate may also lead to the courts and tribunals running more efficiently. The Public: The Open Justice element of the measures will increase the transparency of the justice system and allow those who wish to see and hear proceedings to do so.					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5%
- Saving in travel time assumes two individuals – criminal courts user and their legal representative - Courts users value their time at the HMRC "idle rate" (updated in line with average earnings) - Legal representatives value their time at the lowest hourly rate specified in the government's standard guidelines grid. - All journeys undertaken by the public or legal representatives employ either a car or public transport.					

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m: N/A			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 Government is investing over £1 billion to transform the courts and tribunals system and a further £142 million of Covid funding to upgrade court buildings and ensure they are digitally enabled. Our reform programme includes plans to simplify the courts and tribunals system and deliver a service which is more accessible and works better for everyone. The Police, Crime, Sentencing and Courts Bill will complement the reform programme by helping to improve efficiency, encourage greater use of technology and increase accessibility in the court system.

Enabling British Sign Language (BSL) interpreters to assist profoundly deaf jurors in the jury deliberation room

2. In the UK, it is fundamental to the integrity of the jury system that a jury in retirement is not allowed to communicate with anybody else in terms of sharing information or opinions about their deliberations in a case. Accordingly, the common law currently prohibits the presence of a BSL interpreter in the jury deliberation room.
3. This means that profoundly deaf people, who would require the support of a BSL interpreter, are not permitted to serve on a jury.

Video remand hearings in Police Stations

4. As a response to COVID-19, HM Courts and Tribunals Service (HMCTS) rapidly increased the roll out of operating video remand hearings (VRH) from police stations. This was very successful, reducing the number of people travelling to our magistrates' courts and increasing the resilience of the criminal justice system (CJS). However, police forces have reported resourcing and operational challenges with operating VRH.
5. Previously, prior to COVID-19, most police stations operated without VRH. Without VRH, detainees remanded in custody (usually overnight) are collected by Prisoner Escort and Custody Service (PECS) officers from police stations and brought before the magistrates' courts who decide whether they should be remanded in prison awaiting trial. At the point of PECS collection from the police station, the police have no further involvement. In the VRH model, the detainee remains in the police station. This means the cell is occupied for longer and the police have additional work to facilitate the remote remand hearing (both in terms of booking/arranging the hearing and in facilitating the detainee's participation).
6. While the use of VRH in police stations has always been planned as part of the HMCTS Court Reform programme, COVID-19 brought forward the implementation of this plan. VRH from police stations was always going to raise resourcing issues and was the subject of discussion between operational partners pre-COVID-19. However, the extensive and quick rollout of VRH at police stations as a response to the current crisis has brought this issue into sharp focus.
7. The police have confirmed that forces have had to resource two new and distinct roles to operate VRH in police stations. Both of these roles involve work which would normally be undertaken by PECS officers in court cells, with the support of court staff:
 - The **administrative** role of Custody Video Single Point of Contact which oversees and coordinates the video hearing and arranges any meetings the defendant has with lawyers and probation.
 - The **custodial** role of Video Dock Officer which involves escorting detainees to and from police cells, hearings and meetings with legal representatives and probation.
8. The current legislation under which PECS officers operate does not specifically provide that they may have custody of detainees at police stations in the same way it specifies that they may have custody of detainees at court. This means that whilst we have been able to deploy PECS officers to police stations

during the pandemic they have only been able to take on the first of these two roles. PECS officers have therefore been able to assist with the **administration** of VRH via the Custody Video Single Point of Contact role but not the **custodial** Video Dock Officer role.

9. Police forces that are operating VRH are therefore still having to cover this custodial role which is creating resourcing pressures for them. As a result, and following the National Police Chief Council (NPCC) recommendation that forces should cease to support VRH after December 2020, the majority of forces have withdrawn from operating VRH unless the defendant has tested positive or is suspected of having Covid-19. One police force is likely to continue with VRH as it delivers local benefits to the police force, however there is no commitment from any other police force to continue to facilitate VRH from April 2021.
10. The use of VRH has supported the CJS response to COVID-19, reducing the number of people who need to travel to the magistrates' court, reducing the risk of transmission and protecting CJS resilience.
11. A solution to the long-term structural and resourcing issues is required to allow HMCTS to bring forward the rollout of VRHs. This forms part of the wider Crime Reform Programme, to modernise the court service and improve access to justice.
12. Whilst VRHs offer many benefits, it is hard for the police to continue to deploy highly trained officers to help run the hearings, meaning take up is currently low. The legislation will support future resilience by ensuring VRH could operate with less impact on the police in any future events.
13. This was always envisaged as part of Reform but costs and benefits across the CJS were still under discussion. The implementation plan is therefore still being developed and is not yet finalised.

Use of video/audio hearings at court

14. Current legislation already allows for certain criminal proceedings to take place using electronic means, enabling participants to appear through (i) live video link, (ii) live audio link, (iii) live "wholly" video conference or (iv) by live "wholly" audio conference (all are live links). Live video links into a courtroom are often used for vulnerable or intimidated witnesses, in order to avoid the need for them to give evidence in the physical presence of other parties (e.g. a defendant) at the hearing. Live video links are also regularly used for defendants remanded in the custody of a prison, where it is more efficient for the CJS to have them appear at certain proceedings via live link rather than in person.
15. In addition, the court has inherent jurisdiction to allow the use of live links in some circumstances other than those specified in the legislation. The Criminal Procedure Rules on live links for pre-trial hearings place an obligation on the court to make use of live link technology when it is appropriate and also broaden the scope of defendants for whom the technology might be used to include defendants who are not in custody but who "[want] to attend by video link"¹.
16. In March 2020, the Coronavirus Act 2020 ("the 2020 Act") introduced temporary provisions to extend the circumstances in which audio and video live links could be used in a criminal proceedings. These provisions have helped to ensure that the criminal courts can continue to operate as efficiently as possible under challenging circumstances and enable hearings to continue whilst travel restrictions, social distancing, and quarantine requirements remain in place.
17. The 2020 Act is due to expire in March 2022, at which point these temporary provisions will cease to be available to the criminal courts. New legislation is required to make permanent provision to enable and encourage wider use of live links. These new provisions will be developed using the learning and experience from the use of the 2020 Act provisions, helping to deliver improved measures which give the courts more flexibility around when and how live links can be used now and in the future as technology develops. This would make it possible in the future, for example, for a jury, sitting collectively, to participate in a trial by "live video link" where the court considered it appropriate. Remote participation by a jury would only be considered at the discretion of the trial judge where there is good and sufficient reason to operate in this way.

¹ Criminal Procedure Rule 3.2 (4)(b)(i)

Open Justice

18. Open justice is a fundamental principle of the operation of courts and tribunals so that what happens during proceedings can be done transparently. As a result of new technologies, judges will have more options for holding hearings than ever before, and new technologies rolled out during the Covid-19 pandemic provide new possibilities for observing hearings, increasing the options for judges in providing open justice.
19. The legislation currently in place through the 2020 Act allows, in most jurisdictions, remote observation of hearings in order to uphold the principle of open justice, while maintaining control over recording and transmission of proceedings by putting in place clear prohibitions which will apply where the existing prohibitions on photography and audio recording in court are not applicable (where proceedings are conducted wholly by video or audio link with no courtroom in use). However, whilst the prohibitions are clear for hearings taking place entirely by phone or video with no courtroom in use (i.e. wholly video/audio) it is not clear that hybrid hearings (i.e. hearings taking place partly in a courtroom where participants are physically present and partly by video or audio link) are covered to the same extent.
20. The relevant provisions in the 2020 Act covers courts (including criminal courts) and the tribunals within the Unified Tribunals System (UTS) (First Tier Tribunal and Upper Tribunal) but does not include the Employment Tribunals (ETs), Employment Appeal Tribunal (EAT), or any other non-unified tribunals.

B. Policy Rationale and Objectives

21. 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).
22. The primary rationale for the options discussed in this Impact Assessment (IA) is efficiency: to ensure that the courts and tribunal system is flexible and making best use of resources. There is also an equity rationale to ensure that the courts and tribunal system is open, transparent, and accessible by all.
23. The associated policy objectives are to:
 - Modernise the delivery of justice by enabling greater use of modern technology in order to simplify court and tribunal processes and procedures.
 - Increase people's access to the justice system, including more opportunities for people to participate in court hearings without having to physically attend a courtroom or court building.

C. Affected Stakeholder Groups, Organisations and Sectors

24. A list of all the main groups that will be most affected by the measures in this IA is shown below:
 - Her Majesty's Courts and Tribunal Service (HMCTS), which is responsible for the administration of the criminal, civil, and family courts and tribunals in England and Wales;
 - the judiciary (including the magistracy and tribunal judiciary);
 - the Police Service and other agencies who investigate criminal offences, hold suspects in police stations, and prepare cases for prosecution;
 - the Crown Prosecution Service (CPS) and other agencies who prosecute criminal offences;
 - Courts and tribunals users:
 - victims and witnesses of crime whose cases are prosecuted by the criminal courts;
 - defendants of all ages who are prosecuted for criminal offences; and
 - litigants in person
 - Her Majesty's Prison and Probation Service (HMPPS);

- the Prisoner Escort and Custody Service (PECS), which manages the transportation and/or appearance of defendants, who have been remanded in custody, at criminal court;
- Legal Service Providers, especially barristers, solicitors, and prosecutors with regards to defendants prosecuted for criminal offences;
- members of the public who act as jurors in Crown Court trials or may wish to observe court proceedings and, indirectly, their employers where relevant;
- Profoundly deaf individuals who are summoned for jury service;
- the National Police Chief Council (NPCC);
- the media; and
- the Ministry of Justice (MoJ)

D. Description of Options Considered

25. In order to meet the policy objectives, three options have been considered in isolation, and combination, in this IA:

- **Option 0:** Do nothing. Do not bring forward any legislation.
- **Option 1:** Amend the common law to enable the presence of a British Sign Language (BSL) interpreter in the jury deliberation room to assist profoundly deaf jurors
- **Option 2:** Extend the statutory functions of Prisoner Escort and Custody Service (PECS) to enable officers to manage Video Remand Hearings (VRHs) in police stations.
- **Option 3:** Modify and make permanent temporary provisions in the Coronavirus Act 2020 to:
 - extend the use of video and audio hearings and remote participation in hearings in the criminal jurisdiction;
 - ensure that video and audio hearings across the courts and tribunals system can be observed by members of the public but prohibit observers and participants from making unauthorised recordings or transmissions of these proceedings.

Option 0

26. Option 0 is undesirable because it will fail to meet the policy objectives. This is because the option will not improve access to the justice system, nor will it help to improve the operational efficiency of the courts and tribunal system by taking full advantage of new and emerging technologies.

Option 1

27. This option will amend the common law to enable the presence of a BSL interpreter in the jury deliberation room to assist profoundly deaf jurors. The effect of this change will be that profoundly deaf jurors will no longer be considered to be ineligible for jury service because they would require the assistance of a BSL interpreter in the jury deliberation room.

Option 2

28. This option will amend the Criminal Justice Act 1991 to provide PECS officers with the power to have custody over prisoners in police stations, including detainees in legal custody, for the purpose of overseeing a preliminary, enforcement or sentencing hearing taking place by way of live link, in particular VRH, and matters associated with such hearings (such as overseeing pre-trial meetings with solicitors and probation officers).

29. The use of VRHs is a key element of the wider HMCTS Reform Programme as it will reduce unnecessary travel and, crucially, will help ensure that the CJS is making the best use of new technology to improve efficiency in our system. While their rollout across police stations is intended during the life of the Programme, the implementation plan is being developed and not yet finalised. This option can therefore be considered enabling legislation to ensure that any future VRH rollout is not reliant on police resource, which would be an ineffective and inefficient use of their training and skills.

Option 3

30. This option will introduce new legislation to modify and make permanent the temporary provisions provided in the 2020 Act, which will enable the wider availability of video and audio live links in criminal courts. This will give the criminal courts greater flexibility in the way that live links are used.
31. Where the criminal court is satisfied that it is in the interests of justice and having considered any representations from the parties involved (including Youth Offending Teams for youth cases), the court will have the power to direct the use of live links or a fully video hearing. The proposed legislation will not restrict the use of live links to any specific type of hearing or participant. The criminal court will need to consider a range of factors when deciding whether to make a direction for the use of a live link or a fully virtual hearing.
32. This option will also enable the criminal courts to maximise the use of video and audio technology as it develops in the future. This might mean that they could, for example, in the future arrange for a jury, sitting collectively in another room in the court or another building, to participate in a trial by live link, where it was necessary and appropriate to do so in the circumstances.²
33. In addition, this option will also allow for remote observers at any type of hearing in the courts and tribunals (subject to being enabled via secondary legislation when it is considered appropriate and practicable to do so) and prohibit those observers from recording or broadcasting the hearings they are observing.
34. The provisions in the Coronavirus Act 2020 regarding prohibitions on the recording and transmitting of remote proceedings will therefore be built upon, made permanent, and extended to coroners' proceedings, the Employment Tribunals, the Employment Appeal Tribunal and the Competition Appeal Tribunal so that these measures apply across the courts and tribunals system.
35. The process for considering live link applications in the criminal courts (including guidance on the circumstances which may or may not be appropriate for a live link direction) will be set out in the Criminal Procedure Rules, Criminal Practice Directions and other legal directions. This will help to ensure that a consistent approach is taken when considering these applications.
36. In the civil and family jurisdictions and in all tribunals, the ability to direct proceedings using audio and video live links is not governed by legislation. Instead, it is done under the court or tribunal's inherent jurisdiction, or its procedural and case management powers. As such, legislation in this Bill is not required in this space and it is not covered by this option.
37. Further provisions guiding how remote observations will be implemented in different types of hearing (e.g. wholly remote, hybrid, and wholly in-person hearings) across the courts and tribunals system will be set out in secondary legislation to be made by the Lord Chancellor with the concurrence of the Lord Chief Justice.
38. This option will also provide more clarity on the prohibitions of unauthorised livestreaming and broadcasting of hearings in different scenarios in criminal, civil, family and tribunal proceedings. For this purpose, the legislation will make it an offence for anyone to record or broadcast a hearing except where explicitly authorised. This will ensure that public and media access to and participation in video and audio hearings is duly considered and that open justice can be maintained. This measure covers all jurisdictions i.e. criminal, civil, family and tribunals.

E. Cost Benefit Analysis

39. 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.

² Jurors would not be able to participate in a trial by individual live links (e.g. set up from their home).

40. 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.
41. 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).
42. The provisions in this IA form part of a wider programme of reform of the courts and tribunal system, both legislative and non-legislative. It is difficult, therefore, to appraise these options as the reforms across the programme are likely to interact with each other and affect cost and benefit figures over the appraisal period. For the purpose of the analysis presented in this IA, each option has been appraised assuming that all else is held equal.
43. The impacts in this IA have been estimated as follows:
- Price base year of 2020/21
 - 10-year appraisal period beginning 2021/22
 - Discounting base year of 2020/21
 - Optimism bias is applied to costs and benefits where appropriate

Option 1: Remove the common law prohibition to permit the presence of a British Sign Language (BSL) interpreter in the jury deliberation room to assist profoundly deaf jurors

Costs of Option 1

Monetised costs

44. Evidence from HMCTS suggests the number of people affected will be small. Therefore, given the expected minimal costs associated with this option, the costs have not been monetised and are described below.

Non-monetised costs

HMCTS

45. This option will amend the law to allow BSL interpreters to be present when a jury consider their verdict(s). Such assistance is required where a juror is profoundly deaf – currently, a profoundly deaf juror is excused from service.
46. The principal cost of this option is therefore that of the provision of interpreters, not only for jury deliberation but also for the duration of the trial as a consequence of profoundly deaf individuals being permitted to serve on a jury.
47. For each profoundly deaf juror, two BSL interpreters will be required at any one time to ensure that they can alternate shifts. A juror typically serves for two weeks at a time. However, anecdotal evidence from HMCTS suggests the number of profoundly deaf jurors who are excused each year is in the single digits. Given the very low number of jurors that are likely to require such assistance, it is not deemed proportionate to monetise these costs.
48. There may be other very minimal costs to HMCTS in ensuring that the court room and jury deliberation room are set up for the interpreters, as well any interpreter cancellation costs if the relevant juror is not selected or is excused by the Judge as being unsuitable.

Benefits of Option 1

Monetised benefits

49. It has not been possible to identify any monetised benefits associated with this option.

Non-monetised benefits

Profoundly Deaf Individuals

50. This provision will allow all profoundly deaf individuals to serve on a jury and engage with a fundamental element of the criminal justice system in the same way as other individuals without a disability.

Option 2: Extend the statutory functions of Prisoner Escort and Custody Service (PECS) to enable officers to manage Video Remand Hearings (VRHs) in police stations.

51. As this option solely concerns the ability of PECS officers to carry out the custodial role in police stations, it can be considered enabling legislation and does not in and of itself lead to any costs or benefits. The use of VRHs is, however, a key element of the wider HMCTS Reform Programme and their rollout across police stations is intended during the life of the Programme. The impacts of this option on the costs and benefits of VRH rollout are therefore set out in this IA. The costs and benefits of VRHs themselves are not considered.

52. This option relates solely to the management of the VRHs as opposed to any wider elements of rollout. While we have been able to deploy PECS officers to police stations to assist with the administration of VRH, the current legislation under which they operate does not specifically provide they may have custody of detainees at police stations in the same way it specifies they may have custody of detainees at court. Although the National Police Chiefs Council have recommended that police forces withdraw from supporting VRHs due to resourcing challenges, under current legislation, the custodial role in any future rollout of VRHs could only viably be staffed by police.

53. As we assume for the purposes of this IA that VRHs will indeed be rolled out at some point in the future, the Do Nothing baseline is therefore considered to be a situation in which they are staffed by police. Consequently, the costs and benefits of Option 2 are compared to this baseline and consider the impact of allowing PECS Officers to staff the VRHs instead of the police. These are economic rather than financial costs and benefits. However, it should be noted that in reality without the legislation some or all police forces would not take up VRH in any future rollout.

Costs of Option 2

Monetised costs

MoJ

54. When compared to the baseline described above, under this option there is cost to MoJ for PECS resource. More in-depth commercial analysis is required to understand the potential costs of this option on VRH rollout as the MoJ/PECS contract will need to be amended. However, an initial estimate suggests that the cost of this additional service will be in the region of £15.0m per year. This provides for approximately 400 PECS staff undertaking both dock officer and co-ordinator roles.

Non-monetised costs

55. While the rollout of VRHs will require investment in technology and police custody facilities, these costs are not affected by the issue of the management of VRHs. Given the baseline discussed above, these costs would be incurred under the Do Nothing option as well as under this option. As the legislation solely concerns the management of VRHs, only the resourcing costs relating to management of VRHs are captured in this IA.

Benefits of Option 2

Monetised benefits

MoJ/Police

56. Enabling PECS officers to carry out the custodial role in police stations will enable VRHs to be held in police stations while allowing police resource to be directed elsewhere. When compared to the baseline described above, there would therefore be economic efficiency benefits to government under this option

as police resources would no longer need to be directed towards these tasks. While the level of uptake by the police of any future rollout of VRH without the legislation is uncertain, under the assumed baseline in this IA of full rollout, the benefit to government is estimated to be approximately £27.8m per year based on initial police modelling which is yet to be validated. We make no assumption as to how this benefit is distributed between MoJ and police as the IA is not concerned with underlying funding arrangements. In reality, without the legislation some or all police forces would not take up VRH in any future rollout.

Non-monetised benefits

Police

57. By freeing up police resource, this option will ensure that police officers can focus their time on tasks which make best use of their skills and training. This will allow police resource to be used in a more effective and efficient way.

Summary of Option 2

58. As the plan for VRH rollout has not been finalised, it is assumed that 50% of the rollout will take place in 22/23, reaching 100% in 23/24. It is important to note these figures are as a percentage of the assumed rollout plan (which is not yet finalised), not as a percentage of remand hearings themselves (as some remand hearings will still be done face to face). This is a modelling assumption and rollout may not follow this profile in practice. The deflated and discounted monetised costs and benefits of this option are summarised in the table below. As explained above, it should be noted that in reality without the legislation some or all police forces would not take up VRH in any future rollout:

Table 1: Option 2 Summary

£m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	Total
Cost	0.0	6.7	12.7	12.0	11.4	10.8	10.2	9.6	9.1	8.6	91.1
Benefit	0.0	12.5	23.6	22.3	21.1	20.0	18.9	17.9	16.9	16.0	169.2
Net Benefit	-0.5	0.0	7.4	7.0	6.6	6.3	5.9	5.6	5.3	5.0	78.1

NPV (£m)	78.1
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Option 3: Modify and make permanent temporary provisions in the Coronavirus Act 2020 to:

- **extend the use of video and audio hearings and remote participation in hearings in the criminal jurisdiction;**
- **ensure that video and audio hearings in all jurisdictions can be observed by members of the public but prohibit observers and participants from making unauthorised recordings or transmissions of these proceedings.**

Costs of Option 3

Monetised costs

HMCTS

59. While the use of video and audio hearings requires capital investment in technology, this has already begun and would not be affected by this option. These costs are therefore considered to be sunk costs and not directly associated with the legislative measure proposed here.

60. This option is, however, necessary to ensure that video and audio hearings in the criminal courts can continue in the future. The annual resource cost to HMCTS is therefore captured in this IA and covers support, service design and hosting costs. These costs cover the criminal courts only as this is the only jurisdiction which requires the specific legislation under this option to allow for such hearings. As it is not possible to isolate the resource costs for the criminal courts only, the total costs have been apportioned on the basis of criminal court receipts as a percentage of overall HMCTS receipts in the calendar year 2019. As these costs vary by year, the cost in each year is presented in the summary table below.

Non-monetised costs

CPS, Police

61. HMCTS is working with the CPS and the Police to identify the impact of enabling wider use of live video and audio links on these agencies. At this stage, it is not possible to monetise the operational costs of these impacts given the uncertainty. As much of the necessary infrastructure and processes for video hearings are now well-established, further implementation costs are not anticipated.

HMCTS

62. This option enables courts to maximise the use of future developments in technology. For example, there is the potential in the future for a jury, sitting collectively, to participate in a trial by “live video link” where the court considered this appropriate. This option also contains enabling powers that allow for remote observation of traditional hearings across the courts and tribunals system to take place by video/audio links, in order to facilitate Open Justice. There may be additional costs for HMCTS associated with such measures however these would need to be costed in the future as they are developed.

Criminal Courts Users

63. It is not anticipated that there would be any costs to criminal court users who are unable to participate in video and audio hearings as the judiciary will have the power to direct the extent to which a hearing is heard physically or remotely based on the circumstances.

Benefits of Option 3

Monetised benefits

Criminal Courts Users, Legal Service Providers

64. By allowing for video and audio hearings, criminal courts users and legal service providers will no longer have to travel to court or to the tribunal, leading to saved travel time. Regional analysis of populations together with courts and tribunals locations is used to calculate average journey distance and times. Applying the HMRC estimate of the value of taxpayer time and average solicitor hourly rates, gives an estimated saving of approximately £1.1m in steady state.
65. There will also be associated savings in the cost of travel. Using the same analysis as above and applying standard government mileage rates, this is estimated to be approximately £0.2m in steady state.

Wider Impacts

66. The reduction in travel will lead to reduced carbon emissions, estimated to be a benefit of £0.01m based on the estimated reduction in emissions and the economic cost of a tonne of carbon dioxide.

Non-monetised benefits

HMCTS

67. By allowing hearings to be heard outside of court or in smaller courtrooms, this option will reduce pressure on the HMCTS criminal courts estate. This will lead to efficiency savings as the estate can be used more effectively through maximising courtroom space. It will also mean that, for example, hearings do not have to be cancelled at short notice if a participant can no longer attend court in person. It has not been possible to identify the scope of these benefits and so they cannot be monetised.

CPS, Police

68. Video hearings will provide increased flexibility and efficiency for CPS and Police resources as individuals such as prosecutors may no longer need to attend a number of different courts in a single day but could take part online from a single location. As it is not possible to know to what extent hearings will take place over live link rather than physically, particularly once Covid-19 is no longer a relevant consideration, these benefits cannot be monetised.

Criminal Courts Users

69. Increasing the flexibility of the justice system by allowing users to attend by live link will increase the accessibility of the justice system.

The Public, The Media

70. The Open Justice element of the measures will increase the transparency of the justice system and allow those who wish to see and hear proceedings to do so.

Summary of Option 3

71. The deflated and discounted monetised costs and benefits of this option are summarised in the table below, with 15% optimism bias applied to benefits and 10% applied to costs.

Table 2: Option 3 Summary

£m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	Total
Cost	0.3	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	3.1
Benefit	0.0	0.0	0.5	1.1	1.0	1.0	0.9	0.9	0.9	0.9	7.2
Net Benefit	-0.3	-0.4	0.1	0.7	0.7	0.7	0.7	0.6	0.6	0.6	4.1

NPV (£m)	4.1
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Overall Summary Options 1-3

72. The recommended option is Option 1 – 3, inclusive. The NPV of each option is presented in the table below, as well as the overall NPV.

Table 3: Overall Summary Options 1-3

Option	NPV (£m)
Option 1: Amend the common law to permit the presence of a British Sign Language (BSL) interpreter in the jury room to assist profoundly deaf jurors.	N/A
Option 2: Extend the statutory functions of Prisoner Escort and Custody Service (PECS) to enable officers to manage Video Remand Hearings in police stations.	78.1
Option 3: Modify and make permanent temporary provisions in the Coronavirus Act 2020 to: - extend the use of video and audio hearings and remote participation in hearings in the criminal jurisdiction; - ensure that video and audio hearings in all jurisdictions can be observed by members of the public but prohibit observers making unauthorised recordings or transmissions of these proceedings.	4.1

NPV (£m)	82.1
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F. Risks and Assumptions

73. The key assumptions behind the cost benefit analysis 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.

Option 1

The costs and benefits of this option were not monetised, therefore there are no assumptions.

Option 2

Assumptions

- As described in Section E, the baseline used in this IA focuses on the impact of the legislation on the management of VRHs, as opposed to the costs and benefits of VRH rollout itself. It is possible to think about the baseline differently, such that under the Do Nothing, no VRHs are held given the current issues concerning resourcing. Using such a baseline would present a net cost as it would reflect the monetisable costs and benefits of VRH rollout itself. As the legislation under Option 2 is considered enabling, concerns solely the management of VRHs and does not commit anyone to VRHs, this baseline was not used.
- The PECS cost estimate assumes 400 PECS officers will be required in steady state.
- The police cost estimate is from initial modelling carried out by the police and this is yet to be validated. It assumes that all police forces will take up VRH.

Option 3

Assumptions

- HMCTS resource costs apportioned to criminal courts based on criminal court receipts in the calendar year 2019 as a percentage of all HMCTS receipts. To note, using sitting days instead of receipts would give a similar result.
- When calculating the value of travel time saved by participants attending cases by live link online, rather than in person, we assume that there are two participants: the first is the courts user; the second is their legal representative. In reality, there may be any number of participants, ranging from one or two individuals; perhaps an individual and their legal representative; perhaps a group of individuals and a legal team.
- Courts users value their time at the "idle rate" previously estimated by HMRC (and subsequently updated in line with average earnings).
- Legal representatives value their time at the lowest hourly rate specified in the government's standard guidelines grid.
- All journeys undertaken by the public or legal representatives employ either a car or public transport; no-one walks or cycles.

G. Wider Impacts

Equalities

74. An Equality Impact Statement has been completed and will be published alongside this Impact Assessment.

Better Regulation

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

Environmental Impact

76. There is a positive environmental impact as a result of some of the options in this IA due to falling carbon emissions from a reduction in travel. This impact has been described in the benefits sections above.

H. Monitoring and Evaluation

77. The provisions which extend the use of video and audio live links will be reviewed as part of an MoJ thematic evaluation. HMCTS will undertake a project led evaluation specifically covering video remand hearings.

78. A review of the remaining measures will take place 18 months after the legislation comes into effect to assess whether the policy has had the desired impacts as well as any unexpected consequences. This

will be carried out by MoJ policy in the first instance through analysis of court statistics on caseloads in the magistrates' courts and the Crown Court, listing times, and completion and timeliness.