

Title: Judicial Review and Courts Bill: Increasing efficiency and accessibility in the criminal courts IA No: MoJ009/2021 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: 02/02/2021			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Georgina.Treacy@justice.gov.uk				
Summary: Intervention and Options			RPC Opinion: Not Applicable	

Cost of Preferred (or more likely) Option (in 2021/22 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
36.3	£m	£m	Not a regulatory provision

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

Two notable reviews of the functionality of the criminal court system in England and Wales have identified a number of legislative procedures and structures that are more inflexible and bureaucratic than is thought to be necessary; and that also fail to take advantage of new and emerging technologies. This includes pre-trial proceedings that could be conducted outside of a traditional court hearing, as well as case management across the criminal courts.

This is preventing the criminal court system from increasing the efficiency of the progression and resolution of criminal cases and from providing new and intuitive ways for people to engage with its processes. The government is best placed to resolve these issues because the procedural and structural changes needed to achieve this will require the implementation of new/amended primary legislation and amended secondary legislation.

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

The policy objectives are to deliver swifter criminal justice, improve administration and case management across magistrates' courts and the Crown Court, and provide more ways for people to engage with criminal courts processes in order to increase efficiency and accessibility in the criminal courts in England and Wales. This will result in time savings for the court and its users, a reduction in delays, greater flexibility for the effective deployment of court resources, and support for the system's recovery in the wake of the pandemic.

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

Option 0: Do nothing – maintain the status quo.

Option 1: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.

The preferred option is **Option 1**, all measures, as this will best meet the policy objectives.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: MonthYear - Not known					
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	Large 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:** David Watson Date: 03.02.21

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system

FULL ECONOMIC ASSESSMENT

Price Base Year 21/22	PV Base Year 21/22	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 36.3
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	0.49		2.8	22.3	
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>The main cost of these measures is to HMCTS, estimated at £22.3 million over a 10-year appraisal period. The annual average cost is estimated to be £2.8 million. These costs largely cover investment in IT systems, as well as the additional costs to the magistrates' courts where cases will be moved from the Crown Court.</p>					
<p>Other key non-monetised costs by 'main affected groups'</p> <p>There will be non-monetised IT implementation and maintenance costs to HMCTS although it has not been possible to isolate them. There will be some non-monetised costs to the Crown Prosecution Service (CPS) and Legal Aid Agency (LAA) as changes in criminal court procedures may impact their ways of working.</p>					
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		7.6	58.6	
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>The main benefits of these measures are to HMCTS, including court efficiency savings where cases are moved away from the Crown Court as well as staff time savings. Monetised benefits to defendants and solicitors have also been identified where online processes mean individuals no longer need to attend court.</p>					
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>The main non-monetised benefits largely relate to the potential for the measures to deliver swifter criminal justice with fewer ineffective trials, leading to potential efficiency savings for HMCTS, CPS and LAA as well as greater certainty for victims.</p>					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5
<p>It is assumed that in steady state, 60% of eligible defendants will engage with the court in writing/online - this assumption is carried throughout the appraisal. The assumption around the percentage of cases expected to be returned back to the magistrates' courts is uncertain, as is the change in any imposition losses to HMCTS should the Standard Statutory Penalty amounts change. Sensitivity analysis has been carried out to show the change in NPV should these assumptions change.</p>					

BUSINESS ASSESSMENT (Option 1)

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

The criminal court system in England and Wales

1. Her Majesty's Courts and Tribunal Service (HMCTS) is an executive agency of the Ministry of Justice (MoJ) and is responsible for the administration of courts and tribunals in England and Wales. This includes the criminal court system, which is comprised of magistrates' courts, the Crown Court, and the criminal division of the Court of Appeal.
2. There have been two notable reviews of the criminal court system in England and Wales in recent decades; Sir Robin Auld in his 'Review of the Criminal Courts (2001)'¹ and Sir Brian Leveson in his 'Review of Efficiency in Criminal Proceedings (2015)'.² Both of these reviews identified improvements that could be made to the structure, processes, and efficiency of the criminal justice system (CJS).
3. In September 2016, the then Government published its consultation paper titled '*Transforming our Justice System*', which was released in tandem with a joint statement by the Lord Chancellor, Lord Chief Justice of England and Wales, and the Senior President of Tribunals.³ The joint statement described plans for a modern court system, shared by the Government and senior judiciary, stating 'the vision is to modernise and upgrade our justice system so that it works even better for everyone, from judges and legal professionals, to witnesses, litigants and the vulnerable victims of crime.' The statement also identified a number of 'real challenges' that still remain in the justice system through inefficient and outdated processes.
4. The Judicial Review and Courts Bill ("the JR&C Bill"), in combination with amendments to secondary legislation (primarily under the Criminal Procedure Rules ("the CrimPRs")), will introduce a wide range of legislative criminal court measures that will help us to continue to realise the vision for our criminal courts that was described in the 2016 joint statement, as well as delivering on more of the recommendations that featured in Lord Justice Auld's and Lord Justice Leveson's previous reviews of the criminal court system.
5. These measures will also form part of HMCTS's ongoing criminal court reform programme, in which 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 so that they are digitally enabled. The legislative measures will enable key parts of the reform programme so that we can continue to deliver vital improvements to the criminal court system and modernise the delivery of justice; this includes digitising and streamlining preliminary pre-trial court proceedings, removing unnecessary court hearings, and forging stronger links between the Crown Court and magistrates' courts. This will make our criminal court system more easily accessible to users and provide greater flexibility for the effective deployment of its resources; saving court time, reducing delays, delivering swifter justice, and supporting recovery in the wake of the coronavirus pandemic.

¹ *A review of the Criminal Courts of England and Wales*, Rt. Hon Robert Auld, LJ [2001]

² *Review of Efficiency in Criminal Proceedings*, Rt. Hon Sir Brian Leveson, LJ [2015]
<https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>

³ *Transforming our Justice System*, p3: [Transforming Our Justice System](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/544443/transforming-our-justice-system.pdf) By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals ([publishing.service.gov.uk](https://www.publishing.service.gov.uk))

6. These measures will not undermine the strong traditions and robustness of our legal system and a full hearing at court will always be available when required.

The Common Platform

7. The Common Platform is an online digital case management system, which brings together all the relevant information about a criminal case from beginning to end. It is a ground-breaking £270m digitisation of criminal court services and was launched in 2015 as part of the major £1 billion HMCTS transformation programme. HMCTS began introducing the Common Platform into magistrates' and Crown Courts for live operational use in September 2020, where it has since been used to support all manner of criminal cases. As of January 2022, the Common Platform is live in 101 courts, equating to 44% of all criminal courts, and has managed over 40,000 criminal cases since rollout began. HMCTS aim to go live at all remaining criminal courts as soon as possible in 2022, but this is dependent on agreeing to resume rollout to further sites with the senior judiciary.⁴
8. The Common Platform replaces several legacy IT systems with a single new system, providing access to all the material necessary to deal with cases efficiently and effectively. It is designed to act as a central hub, enabling the Crown Prosecution Service (CPS), HMCTS, the judiciary, and professional users (including defence professionals) to access, share, and process all the relevant information about a case. Its core digital delivery functions include HMCTS case handling and optimisation of the hearing and resulting of decisions. It is making the CJS more robust and flexible and is being used to great effect to remove the manual handling of documents, duplication of process, and the re-keying of information.
9. The Common Platform is supporting HMCTS and CJS strategic reform objectives to place users' needs at the heart of criminal courts and deliver tangible benefits across the justice system. Nevertheless, the platform has even more untapped potential that is waiting to be unlocked in order to further improve the CJS but, is prevented from doing so due to legislative constraints. This includes the ability for the platform to manage more kinds of criminal preliminary pre-trial proceedings online, such as receiving a defendant's indications of plea, allocating a criminal case for trial, and the service of documents between different parties.

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

10. A criminal case enters the criminal court system when a decision is made, usually by the 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, so the decision to prosecute a criminal offence at court is initiated by placing a requirement upon the defendant to appear at a magistrates' court for a first hearing by either:
 - a) charging them in person at a police station (and releasing them on bail or holding them on remand in police custody); or
 - b) sending them a postal requisition, single justice procedure notice, or summons in writing away from a police station (bail is not an issue here).
11. 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:

⁴ [HMCTS Common Platform: participating criminal courts - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/hmcts-common-platform-participating-criminal-courts)

- a) summary-only (SO) offences, which should normally be tried and sentenced in a magistrates' court;⁵
 - b) indictable-only (IO) offences, which can only be tried and sentenced in the Crown Court where the defendant is an adult and, in some circumstances, where the defendant is a child under the age of 18 years; and
 - c) triable either-way (TEW) offences, which can be tried and sentenced in either a magistrates' court or the Crown Court.
12. The vast majority of criminal cases are completed at magistrates' courts (over 93% in 2019), with the remainder of IO cases and more serious TEW cases being sent to the Crown Court for a jury trial or to be sentenced by a judge.

Summary-only (SO) offences

13. SO is the least serious category of criminal offence (such as motoring offences and minor assaults) and carries a maximum penalty of up to 6 months' imprisonment. These offences should normally be tried and sentenced at a magistrates' court (unless jointly prosecuted with an IO or TEW offence), which has more limited sentencing powers than the Crown Court.
14. When a defendant who is prosecuted for a SO offence makes a first appearance at a magistrates' court for a hearing, they will be asked by the court to enter a plea of either guilty or not-guilty. The magistrates' court will then proceed to: (i) convict and sentence the defendant if they plead guilty; or (ii) prepare the case for a trial if they plead not-guilty. However, there are also options to apply alternative preliminary procedures for the prosecution of less serious SO offences, which negate the need or requirement for a defendant to appear at a magistrates' court for the hearing or, in some circumstances, for any hearing to take place at all.
15. The first alternative procedure is referred to as '*pleading guilty by post*' and is available under section 12 of the Magistrates' Courts Act 1980 ("MCA 1980") ("the section 12 procedure"). The section 12 procedure provides the option for a defendant aged 16 years and over (or under 16 years when jointly charged with an adult) to indicate a plea in writing to a SO offence without the need to appear at a magistrates' court hearing.⁶ Where a defendant indicates an intention to plead guilty in writing, it will become binding (as if they had pleaded guilty at court) if the defendant also consents in writing that the magistrates' court may proceed to try, convict, and sentence them at a hearing in their absence.
16. Having tried and convicted a defendant in absence under the section 12 procedure, a magistrates' court does not have the power to impose a custodial sentence without bringing a defendant before the court for a sentencing hearing, issuing a warrant for their arrest if necessary. If the court intends to impose a driving disqualification, it must first adjourn the case to give a defendant the opportunity to attend but can then disqualify in absence at the next hearing.

⁵ A summary only offence can be tried and sentenced in the Crown Court if it features as part of the same case as another triable either-way or indictable only offence.

⁶ Whilst the current legislation under section 12 also makes it possible for children under 16 to be prosecuted in this way, it can only happen if there is an adult co-defendant and to our knowledge, the procedure has never been used in this way. Furthermore, the Criminal Procedure Rules only provide a procedure for defendants who have attained the age of 16 years and over.

17. The decision to apply the section 12 procedure to a criminal case is at the discretion of the prosecuting agency; in practice, the police rarely use the section 12 procedure for imprisonable SO offences. It is also entirely voluntary for a defendant to proceed with the section 12 procedure as they need to opt-in to the process. A defendant can still choose to appear at a magistrates' court for a hearing to enter their plea and/or be tried, convicted, and sentenced. Where the offence is punishable with imprisonment or disqualification, the court can require the defendant to attend court in person.
18. The section 12 procedure can only be applied to the prosecution of SO offences that are initiated in writing by a postal requisition or summons away from a police station; the procedure cannot be applied when a defendant is charged in person at a police station and granted police bail to appear for a first hearing at magistrates' court. In these circumstances, there is no alternative but to require the defendant to answer bail and appear at the magistrates' court hearing, even if the case would have been suitable for the section 12 procedure (e.g. because a custodial sentence is unlikely), simply because of the way in which the prosecution was initiated.
19. The second alternative procedure is called the '*Single Justice Procedure*' (SJP) and is initiated by sending an adult defendant a single justice procedure notice. It provides a defendant who is prosecuted for a non-imprisonable SO offence with an optional online service enabling him/her to indicate a binding guilty plea in writing/online and to subsequently opt for a single magistrate, sitting with a legal adviser, to convict and sentence the case "on the papers", without the need for a court hearing. The SJP enables the magistrates' court to deal with a higher volume of cases because they can be dealt with outside of regular court days and hours (with costs still awarded), and to save on prosecutor, magistrate, usher, and courtroom resources on account of there being no traditional courtroom hearing taking place. Should a defendant plead not-guilty, request a hearing, or a magistrate decide that a case is not appropriate to be dealt with under the SJP, the case will be listed for a magistrates' court hearing.
20. Approximately half of the criminal prosecutions in the magistrates' courts are for the SO non-imprisonable offences that qualify for the SJP. The Common Platform has been used to process and hear SJP cases in magistrates' courts for Transport for London (TfL) since April 2017, TV Licensing since January 2019, and the Driver and Vehicle Licensing Agency (DVLA) since October 2020. Since April 2017, over 175,000 SJP cases have been processed through the Common Platform, with only around 4% of cases referred to open court for a hearing. There are also on-going plans for police services to use the Common Platform to prosecute SJP cases, with the first Police SJP site in Hampshire Police having gone live in June 2021. Preparations are underway to align the Common Platform and Police SJP rollout plans for other police forces, including returning to those already live with the Common Platform. The JR&C Bill will also provide clarification in statute that the SJP also applies to corporations, as well as individuals.
21. Many defendants already choose to enter a binding guilty plea in writing/online and to have their case resolved outside of a court hearing in their absence via the SJP, and a number of these cases have been identified as being suitable for resolution through a new automatic online conviction and statutory standard penalty (AOCSSP) procedure. The then government consulted on this proposal between September to November 2016 and confirmed its intention to legislate for it when it published its response that same year.⁷

⁷ <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/>

Indictable-only (IO) offences

22. IO is the most serious category of criminal offence and includes crimes such as robbery, kidnap, rape, and murder. Where the defendant is an adult, this category of offence can only be tried by a jury, convicted, and sentenced in the Crown Court. Consequently, this means that when an adult defendant in an IO case appears at a magistrates' court for a first hearing, the court must '*send*' the case to the Crown Court for a jury trial in accordance with section 51 of the Crime and Disorder Act 1998 ("the CDA 1998").
23. The sending of the case involves only a determination by a magistrates' court as to whether the defendant faces prosecution for an IO or related offence. The magistrates' court is not concerned with the evidential sufficiency of the case but will consider any issues of bail or remand in custody. Therefore, the first hearing for an IO case at magistrates' court is often brief because the court cannot do anything other than deal with issues of bail, carry out basic case management (which includes asking the defendant for an indication of how they intend to plead at Crown Court), and complete the straightforward administrative task of sending the case to Crown Court for trial.
24. Even though a magistrates' court must always send an IO case to the Crown Court for trial, primary legislation under the CDA 1998 requires that the defendant must make an appearance at magistrates' court for a first hearing in order to carry out the administrative process of sending. Both Sir Robin Auld and Sir Brian Leveson commented on the inefficiency of this procedure in their reviews. This is especially true when a case has no real issues of bail that need to be addressed by the court and thus, could otherwise have been sent by the magistrates' court to the Crown Court without the need for the defendant to make a first appearance at a magistrates' court hearing.

Triable either-way (TEW) offences

25. 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' court sentencing powers, and the wishes of the defendant. Consequently, there are two legislative procedures that a magistrates' court must follow in order to establish if and to which part of the criminal court a TEW case should be allocated for trial.
26. The initial '*plea-before-venue*' procedure is first used to establish if a TEW case will need a trial and requires the magistrates' court to invite the defendant to indicate whether they would plead guilty or not-guilty to the offence when they appear for their first hearing at court. If a defendant indicates a guilty plea during plea-before-venue, there will be no need for a trial and the magistrates' court will proceed to convict the defendant before either:
 - a) retaining the case at magistrates' court for sentencing; or
 - b) committing the case to the Crown Court for sentencing.
27. If a defendant indicates a not-guilty plea (or provides no indication at all) during plea-before-venue, the case will need to be tried in a criminal court and the magistrates' court will proceed with the subsequent '*allocation decision*' procedure in order to decide whether the defendant's case is more suitable for a summary trial in the magistrates' court or for a jury trial in the Crown Court.

28. The allocation decision procedure normally takes place at the defendant's first magistrates' court hearing (immediately after the plea-before-venue procedure has concluded), during which the court hears details about the case, the defendant's previous convictions, representations by the parties, and broadly considers if its sentencing powers will suffice.
29. Where a magistrates' court reaches a decision that a TEW case is most suitable for a jury trial at Crown Court, the defendant's case will be sent to the Crown Court in accordance with section 51 of the CDA 1998. Where the magistrates' court reaches a decision that a TEW case is more suitable to be retained with them for a summary trial, the defendant will be asked whether they would consent to this or if they would wish to exercise their right to elect for a jury trial in the Crown Court. If the defendant consents, the magistrates' court retains the case for summary trial. If the defendant does not consent and elects for a jury trial on indictment, the magistrates' court sends the case for trial to the Crown Court in accordance with section 51 of the CDA 1998. The magistrates' court cannot ask for a defendant's consent until after the court has proceeded with the allocation procedure and reached a decision that a summary trial is more suitable, which means this procedure becomes redundant but unavoidable in cases where a defendant has the intention of electing for a jury trial from the very beginning.
30. The plea-before-venue and allocation decision procedures are both provided for under section 17A to 23 of the MCA 1980, and require a defendant to appear at a magistrates' court for a hearing. There are only a few exceptions to this rule (for example, if a legally represented defendant's disorderly conduct before the court means it is not practicable to proceed in their presence), which means that the timely progression of a case through the criminal justice system (CJS) can stall indefinitely if a defendant fails to appear at the hearing (e.g. refuses to leave their cell or appear via live video link when held on remand, or absconds on bail).

Preliminary pre-trial proceedings for children (defendants under 18 years)

31. The age of criminal responsibility in England and Wales is 10 years of age, which means that children aged between 10 and 17 can be prosecuted for criminal offences at court. The criminal court system recognises the increased vulnerability and additional requirements that children have, so treats these types of defendants differently from adults.
32. When a child is prosecuted at court for a criminal offence, there is a general rule that they will be tried summarily, and if convicted, sentenced in a Youth Court (which is a special type of magistrates' court designed for defendants aged between 10 and 17 years), regardless of whether the category of criminal offence is indictable at Crown Court (i.e. TEW and IO offences). However, there are some exceptions to the general rule to proceed with a summary trial at Youth Court that are specified in primary legislation. First, the primary legislation means that a Youth Court must send a child's case to the Crown Court for the most serious indictable offences (e.g. murder). Second, for other indictable offences that qualify as being serious enough to warrant the potential sending of a child's case for jury trial at Crown Court (e.g. serious sexual offences, or offences with a maximum sentence of 14 years plus), Criminal Procedure Rule 9.13 sets out the allocation process that the Youth Court must follow however, unlike adults, a child cannot elect for a jury trial.
33. When a child is jointly prosecuted with an adult in the same indictable case, they will usually make a first appearance in a magistrates' court instead of a Youth Court. The court may send a child to the Crown Court for trial or sentencing with an adult co-defendant where it is necessary in the interests of justice to do so having sent the adult – this will sometimes require an allocation decision for the child depending on the offence type for both the adult and child and the sequence of prior proceedings.

34. The MCA 1980 and CDA 1998 states that children must make a first appearance at a Youth Court or magistrates' court hearing in order to indicate a plea and to facilitate the administrative process of sending their case to the Crown Court where this is required. Like adults, primary legislation also provides the limited circumstances in which a court may proceed with the allocation procedure for a child's case in the child's absence.

Local Justice Areas (LJAs)

35. The Crown Court, County Court, and magistrates' courts operate under separate administrative, legislative, and procedural systems. The Crown Court and County Court are single entities which sit across England and Wales as a whole. Judges are appointed to a "circuit" area of the Crown and County Courts by the Lord Chancellor and the Lord Chief Justice on the recommendation of the Judicial Appointments Commission (JAC) and are assigned a base court where they normally do the majority of their work. However, there is a national jurisdiction and judges are able to sit in any Crown or County Court if the need arises.
36. The magistrates' courts operate very differently, with England and Wales currently divided into 75 local justice areas (LJAs). LJAs were first introduced in the Courts Act 2003, prior to which, each area of England and Wales had a separate 'commission of the peace' and each commission area was divided into 'petty session' areas.
37. There are a number of administrative functions linked to LJAs. For example, fines may only be enforced by a court in the LJA which imposed the sentence or by a court in the LJA to which responsibility for enforcement of the fine has been transferred. Breaches of community orders may only be heard in a magistrates' court in the LJA where the offender resides, or which is named in the order. Enforcement of community order breaches and fines is therefore tied to LJAs and an order cannot be simply enforced outside that Area (for example, if a defendant moves home), without either the order or the justices being transferred to the supervising LJA.
38. LJAs can only be specified or varied by secondary legislation following consultation with the Lord Chief Justice, magistrates and local authorities in the LJA concerned. This process is time-consuming, making it difficult to alter boundaries and put arrangements in place quickly to help address any backlogs of work and ensure the courts run more efficiently. Moreover, Rules made under the Courts Act 2003 require that each LJA has its own magistrates' bench, with the attendant infrastructure of a bench chairman, deputy chairmen, annual meetings and a justices' training committee. The optimum size of an LJA for these purposes often does not match the optimum size for efficient scheduling to deal with the business of the court.
39. The borders between the existing 75 LJAs and improvements in transport infrastructure mean that court users cannot always attend the magistrates' court closest and/or most convenient to them because it sits within another LJA.⁸ These boundaries also make it harder to transfer defendants' cases to a court in a different LJA, which may have more listing time available. They also add considerable complexity when dealing with a defendant who is charged with offences in more than one LJA, or who is charged in one LJA while in breach or default in another. This means that cases are not always heard at the earliest opportunity or at the most expedient court location.

⁸ Court users in Glossop, for example, currently have to travel twice as far to their local justice area court in Chesterfield, as opposed to attending nearby Manchester magistrates' court. Similarly, residents in the northern fringes of North Yorkshire are unable to attend Middlesbrough magistrates' court which is significantly more convenient than a journey to their own local justice area magistrates' courts in Northallerton or Scarborough.

40. Changes to the CrimPRs, Criminal Practice Direction on Listing, and the creation of Judicial Business Groups have all focused on increasing flexibility in the way the business of magistrates' courts is managed. However, the existence of LJAs hinders what can be done in this area because magistrates and cases cannot be moved between them easily; with magistrates assigned to a specific LJA, rather than on a national basis across England and Wales as is the case in the Crown Court.
41. The Courts Act 2003 requires lay magistrates to be assigned to a specific LJA when appointed. Although every magistrate is capable of hearing cases in other LJAs, they can currently only do so in accordance with arrangements made by the Lord Chief Justice. There are a number of advantages in allowing lay magistrates to work across several LJAs, including sharing best practice, balancing excessive differentials in sitting levels between areas, making the best use of magistrates with particular skills (e.g. Welsh language) and enabling them to maintain a range of competencies.

Case management between magistrates' courts and the Crown Court

42. The structural and procedural differences between magistrates' courts and the Crown Court have resulted in a longstanding debate about the merits of creating a more unified criminal court system. Sir Brian Leveson, President of the Queen's Bench Division of the High Court, made clear his support for greater unification of the criminal courts in his Review of Efficiency in Criminal Proceedings. The Review argued that three factors have impeded moves towards criminal court unification: the lack of a single IT system across the criminal court system in England and Wales; the separate physical estates of the two criminal court jurisdictions; and the lack of legislation to support the free movement of defendants between the jurisdictions.
43. The adoption of the Common Platform and the HMCTS Reform programme are currently addressing the first two of the above impediments. In respect of the third impediment, the Review stated that, "a unified court would allow for greater jurisdictional flexibility in the allocation of cases and the ability to match judicial resources to caseload." It also called for a case management function that recognises criminal cases can change as they progress through the system. At present, there are very limited circumstances in which a Crown Court can or must return a case to a magistrates' court (or a Youth Court). This can currently occur, for example:
 - a) Where a magistrates' court has sent a multi-category offence case (IO and TEW offences) to the Crown Court for trial on the basis of the IO offence, the prosecution of the main IO offence is discontinued, the defendant indicates a not-guilty plea to the remaining TEW offence, and they consent to summary trial.
 - b) Where the Crown Court has convicted a child for an offence other than murder and is satisfied that the case should be sentenced in a Youth Court.
44. There are many other circumstances where it would be sensible and practicable for the Crown Court to be able to return a case back to a magistrates' court because it could be heard more quickly and at less cost but is prevented from doing so by primary legislation. For example:
 - a) Where a magistrates' court sends a TEW case to the Crown Court for trial because of the serious facts of the case, which turn out, following sending but before trial, to have been much less serious (for example, a serious injury turns out to be not so serious at all), and the defendant would consent to summary trial.

- b) Where a magistrates' court sends a multi-handed case to the Crown Court for trial, then following sending but before trial, one of the defendants no longer requires a trial (for example, because the case against them is discontinued, they have pleaded guilty, or died), the charges against the co-defendant are much less serious, and the co-defendant would consent to summary trial.
- c) Where a SO offence is added to the indictment under s.40 of the Criminal Justice Act 1988 ("the CJA 1988") and an adult defendant pleads guilty to the IO offence but not-guilty to the SO offence.

Statutory requirement to hold a hearing to determine certain matters

- 45. The criminal courts already have inherent powers to determine matters without a hearing in some circumstances, but there are existing provisions which preclude this in certain cases. For example, in some criminal cases it is in the interests of justice to issue a 'witness summons' in order to secure the attendance of a person who is required to give or produce evidence during those criminal proceedings, especially when there is a belief the person would not attend otherwise. The application is made by the party calling the witness, and the other party has no right to be heard and as a result is not involved in the application. Primary legislation under the Criminal Procedure (Attendance of Witnesses) Act 1965 ("CPAWA 1965") requires the Crown Court to hold a hearing at which interested parties are required to appear in order to determine any such application for a witness summons. However, this is not necessary in the magistrates' court where the procedure is governed by the MCA 1980 and the CrimPRs and is usually done by written application to the court.
- 46. It is a general principle that criminal court proceedings should be held openly and in public, so that justice is seen to be done. However, some criminal cases are subject to reporting restrictions which dictate how the media can report on those proceedings (for example, postponing the publication of a report, or preventing the report from naming a child victim, defendant, or witness). While these reporting restrictions can be lifted, there are statutory requirements that state any representations from a person who objects to this must be heard via their appearance at a hearing before the magistrates' court or Crown Court.
- 47. Finally, the necessity to hold a hearing in what are often straightforward cases can be inefficient, disproportionate, and can create security issues if the matters being discussed relating to a witness in a summons are personal or confidential.

Service of documents in criminal proceedings

- 48. In certain cases, documents are required to be served in a particular way, such as in person or by registered post, in order to be considered as legally served. These methods of service are considered too inflexible and restrictive for some court users, and are also not in keeping with advances in technology which allow service by other means. In particular, it is not possible to serve these documents electronically.

Variable limit for magistrates' court sentencing powers

- 49. The Sentencing Act 2020 (along with certain other legislation) limits magistrates' court sentencing powers to a maximum of 6 months' imprisonment for both summary-only and triable either-way offences. However, there is a provision in the Act that allows for an increase in the maximum sentence available to magistrates' courts to 12 months.

50. Although there is a power to increase the maximum sentence that magistrates' courts may give, there is no power to revert, once the power has been enacted, to a maximum sentence of 6 months in the magistrates' court in the event that any unsustainable pressures materialise as a direct response of this change, such as a significant increase to the prison population.

B. Policy Rationale and Objectives

51. 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 operates (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).
52. The primary rationale for the measures detailed in this Impact Assessment (IA) is to increase the efficiency of the criminal court system by providing court time savings, a reduction in delays, greater flexibility for the effective deployment of its resources, and support for its recovery in the wake of the coronavirus pandemic. There is also an equity rationale to ensure the system is more easily accessible and works more intuitively for the people who use it.
53. The associated policy objectives are to:
- a) Deliver swifter criminal justice.
 - b) Improve administration and case management across magistrates' courts and the Crown Court.
 - c) Provide more ways for people to engage with criminal court processes.

C. Affected Stakeholder Groups, Organisations and Sectors

54. A list of the main groups that will be most affected by these measures is shown below:
- The Ministry of Justice (MoJ).
 - Her Majesty's Courts and Tribunal Service (HMCTS), which is responsible for the administration of the criminal court system in England and Wales.
 - The Youth Justice Board (YJB), which oversees the youth justice system in England and Wales.
 - The judiciary, including magistrates and judges who preside over proceedings in the criminal courts.
 - Court staff, including legal advisers and court clerks who assist with proceedings in the criminal courts.
 - Police Services and other agencies who investigate criminal offences.
 - The Crown Prosecution Service (CPS) and other agencies who prosecute criminal cases.

- The National Probation Service (NPS).
- Victims and witnesses of crimes that are prosecuted at a criminal court.
- Defendants who are prosecuted at a criminal court.
- Members of the public who act as jurors in Crown Court trials.
- Legal service providers, especially barristers and solicitors, who provide legal advice and representation to defendants.
- The Legal Aid Agency (LAA), who provide financial support to defendants who require this to obtain legal advice and representation.
- Charitable and commercial organisations who provide support to people in the CJS.

D. Description of Options Considered

55. In assessing the methods for meeting the policy objectives, two options have been considered in isolation, and combination, for this Impact Assessment (IA):

Option 0 (the 'base case option') – Do nothing and maintain the status quo.

Option 1: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.

Measure

- a) Enable defendants to indicate a plea in writing/online without the need for a magistrates' court hearing for all summary-only (SO), indictable-only (IO), and triable either-way (TEW) offences.
- b) Implement a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified SO non-imprisonable offences, which will enable defendants who wish to plead guilty to choose to have their entire case completed online without the involvement of the court.
- c) Enable magistrates' courts to proceed with the 'allocation decision' procedure for TEW cases in writing/online without the need for a magistrates' court hearing.
- d) Provide magistrates' courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at Crown Court.
- e) Enable magistrates' courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants who fail without good cause to appear at court for their hearing.
- f) Enable magistrates' courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates' court.
- g) Remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas.

- h) Enable the Crown Court to return certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' courts sentencing powers are deemed to be sufficient) in a wider range of circumstances.
- i) Remove the statutory requirement to hold court hearings in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made 'on the papers' instead in accordance with the CrimPRs.
- j) Remove the statutory requirements for documents to be sent by post so that they can be served in accordance with the CrimPRs, including by electronic means via the new Common Platform.
- k) Create a power for Ministers to vary, by regulations the limit on magistrates' court sentencing powers, between maxima of 6 months and 12 months imprisonment.

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

Option 0: Do nothing – maintain the status quo

57. Option 0 would maintain the status quo and therefore fail to meet the policy objectives of increasing the efficiency and accessibility of our criminal court system. Under this option, the criminal court system would be unable to: take full advantage of new and emerging technologies like the Common Platform; streamline criminal court proceedings and remove unnecessary hearings; provide a more flexible and unified criminal court system that improves administration and ensures that cases can move more easily between the Crown Court and magistrates' courts; and provide any new and intuitive ways for court users to participate in criminal court proceedings without having to appear at a courtroom hearing.

Option 1: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.

Measure (a): Enable defendants to indicate a plea in writing/online without the need for a magistrates' court hearing for all summary-only (SO), indictable-only (IO), and triable either-way (TEW) offences

Enable wider application of the section 12 procedure for qualifying SO offences

58. This measure will amend the alternative section 12 procedure, which currently enables defendants to plead guilty by post to less serious SO offences, so that it can also be applied to prosecutions that are initiated against defendants aged 16 years and over who are charged in person at a police station and granted police bail to appear at a magistrates' court for a first hearing. The alternative section 12 procedure will also be made available online so defendants can engage with the process electronically instead of by post if they so wish (like the online service that is already in place for the SJP).

59. The decision to apply the section 12 procedure will remain at the discretion of the prosecuting agency, though the court will retain the discretion not to deal with the case in the defendant's absence as if they have pleaded guilty at court. Defendants will also retain the choice not to opt-in to the procedure and therefore, choose to appear at a court hearing instead. Magistrates' courts will also be subject to the same restrictions that prevent them from imposing a custodial sentence without bringing the defendant before the court for a sentencing hearing; or from imposing a driving disqualification without adjourning the case and first giving the defendant an opportunity to attend a hearing.

60. Where a defendant chooses to both indicate a guilty plea in writing/online and consents to be tried, convicted, and sentenced in absence of their court hearing via the section 12 procedure, their indication of plea will become binding and the magistrates' court may discharge the defendant from their duty to surrender to the court on bail so that the court can proceed to try, convict, and sentence (where appropriate) the case in the defendant's absence at the subsequent magistrates' court hearing.

Enable written/online indication of plea for more serious SO offences, IO offences, and TEW offences

61. This measure will also amend the MCA 1980 and the CrimPRs so that defendants of all ages who are prosecuted for more serious SO offences (that were not suitable for the section 12 procedure or the SJP), IO offences, and TEW offences, can be provided with the choice to indicate a plea in writing/online via the new Common Platform, without the need for a hearing at a magistrates' court. A defendant will need to have legal representation in order to provide a written/online indication of plea for these types of offences because access to the online portal via the Common Platform to do so will be restricted to CJS professionals and practitioners.
62. The written/online procedure will typically consist of one online session, during which all the required information, explanations, questions, and potential options will be made available to defendants and their legal representatives wherever possible. At the conclusion of the online session, all of the information provided and the choices made will be correlated into a single electronic submission to the court, on the basis of which the necessary administrative and judicial decisions will be made as and when they are required.
63. Magistrates' courts will also be able to utilise existing legislation to change the date, time, and court venue at which a defendant is required to appear for a hearing having been charged and bailed by the police, summonsed, or requisitioned to appear at court. This will enable the court to ensure that there is sufficient time for the parties to engage in the written/online indication of plea, potential online/written allocation decision procedures (see measure (c) below), and prepare for the relevant nature of the required subsequent court proceedings before a defendant is required to attend their first hearing at a magistrates' court or the Crown Court. Utilisation of this existing legislation will also facilitate any resulting decisions to send a case to the Crown Court without the need for a prior hearing in a magistrates' court (see measure (f) below).
64. It will not always be appropriate for the court to provide a defendant with the choice to proceed with the plea-before-venue in writing/online, so the CrimPRs will make provisions about the circumstances in which the new written/online procedures cannot be used for a case. This will ensure that the court can proceed to take a defendant's plea via their appearance at a traditional court hearing where this is more appropriate.
65. Where a defendant chooses to indicate a written/online plea for these more serious types of SO offences, IO offences and TEW offences, their plea will strictly remain an indication up until the time they appear at a subsequent court hearing to enter a binding plea. Where a defendant was invited to engage with the new written/online plea procedure for more serious SO offences and TEW offences but did not want to provide an indication of plea in writing/online, or failed to engage with the new procedure through to a satisfactory conclusion, they will be required to appear at a traditional magistrates' court hearing to enter their plea as normal. Where a magistrates' court decides to send an IO offence to the Crown Court for trial without holding a hearing first (see measure (f) below), the court will have sought a written/online indication of how the defendant intended to plead at Crown Court for the purposes of case management.

66. Where a child under the age of 18 years chooses to indicate a plea in writing/online, a Youth Court will need to undertake additional functions if the defendant is aged under 16 years (and will need to consider undertaking these functions if the defendant is aged 16 years or over) in order to ascertain whether the defendant's parent/guardian is aware that written/online procedures are taking place; and if they are not aware, to provide the parent/guardian with the relevant information if it is reasonable to do so.

New written/online indication of plea procedure for more serious SO offences

67. Where a defendant chooses to indicate a plea in writing/online to a more serious SO offence (i.e. one not suitable for the section 12 procedure or the SJP), the court will use existing case management powers (for example, direct probation services to produce a pre-sentence report) to prepare the case for trial or sentencing at a magistrates' court, dependant on the indicated plea. The defendant will then appear at a magistrates' court hearing in order to enter a binding plea before they are tried, convicted, or sentenced.

New written/online indication of intended plea at Crown Court for IO offences

68. A magistrates' court will be able to send IO offences to the Crown Court for trial without the need for a first hearing at the magistrates' court if this is deemed to be appropriate (see measure (f) below). Where an adult defendant has also indicated in writing/online how they intend to plead at Crown Court to an IO offence, the court will use existing case management powers to prepare the case for trial or sentencing at the Crown Court, depending on the indicated plea. The defendant will then make their first appearance at a Crown Court hearing to enter a binding plea before they are tried and either convicted and sentenced, or acquitted.
69. The procedure will differ for children under the age of 18 years because unlike adults, it is possible for a range of IO offences to be retained and dealt with in a Youth Court.

New written/online indication of plea procedure for TEW offences

70. Where an adult defendant chooses to indicate a guilty plea in writing/online to a TEW offence, the court will use existing case management powers to prepare the case for sentencing at a magistrates' court or the Crown Court depending on the circumstances of the case. If a magistrates' courts sentencing powers are deemed to be sufficient, the adult defendant will make a first appearance at a magistrates' court hearing to enter a binding guilty plea before they are convicted and sentenced. If a magistrates' courts sentencing powers are deemed to be insufficient and it is appropriate to do so, the magistrates' court will be able to send the adult defendant's case to the Crown Court for trial (but for the purpose of sentencing) remotely, without the need for a first hearing at the magistrates' court (see measure (f) below). The adult defendant will make a first appearance at a Crown Court hearing instead in order to enter a binding plea before they are convicted and sentenced.
71. Where an adult defendant subsequently changes a written/online indication of guilty plea to a not-guilty plea at their first court appearance, the court will need to prepare for a trial. If the defendant was appearing at a magistrates' court at this stage in the proceedings, the court will proceed with allocation decision procedure at court. If the defendant was appearing at Crown Court at this stage of the proceedings, the court will be able to return the case back to a magistrates' court for a trial if the court deems this to be appropriate and the defendant consents (see measure (g) below).

72. Where an adult defendant chooses to indicate a not-guilty plea in writing/online to an offence TEW, they will be given the choice to proceed with the subsequent new written/online allocation decision procedure (see measure (c) below) or make an appearance at a magistrates' court hearing to deal with the allocation decision instead.
73. The written/online indication of plea procedure will differ for children under the age of 18 years because unlike adults, they do not have the right to elect for a jury trial at Crown Court.

Measure (b): Implement a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified SO non-imprisonable offences, which will enable defendants who wish to plead guilty to choose to have their entire case completed online without the involvement of the court

74. Under this measure, all relevant cases will commence in the same way as an SJP case. If the offence has been specified in secondary legislation as one for which the automatic online conviction procedure may be offered, and the prosecutor considers the individual case to be appropriate, the defendant will be offered the option of resolving their case via this new procedure.
75. Defendants who plead guilty and are offered this procedure will still have to actively opt in to confirm that they wish to use it: it is not a default. Progressing through the online system, the defendant will be given all the relevant information needed to make an informed decision about their choice of procedure. This information will include full provision of information about the charges and evidence against them; the different options available for dealing with their case; the financial implications of the standard statutory penalty; the disclosure regime surrounding the offence they are charged with; and the consequences of pleading guilty and accepting a criminal conviction.
76. Currently, fines are determined by magistrates through the SJP or in court using means-tested procedures (meaning the defendant's income is taken into account). Under this measure, the fine for a given offence will be set out in statute as part of a standard penalty, so the amount will not vary by individual case or defendant. Defendants will be informed what the standard penalty amount is for the offence they are charged with. Users will also be given clear information about how, unlike this standard penalty, fines in court are determined in part on the basis of a defendant's means and the best option for ensuring that any relevant mitigation information (including information about means) is taken into account by the court.
77. The online system will have a number of safeguards in place; with the defendant able to stop the process and choose instead to have their case dealt with through the SJP or a full court hearing at any point prior to accepting the conviction. The magistrates' court will also have the power to set aside a defendant's conviction and reconsider their penalty under certain circumstances (e.g. if it appears to the court that the conviction or penalty imposed is unjust).
78. The provisions for this measure will be commenced by order of the Secretary of State. Only offences committed on or after commencement will be eligible for the automatic online conviction and standard statutory penalty procedure. At commencement, statutory instruments will take effect setting out the initial three offences and the penalties relating to them. These offences will be those set out in the Transforming our Justice System consultation: failure to produce a ticket for travel on a train; failure to produce a ticket for travel on a tram; and fishing with an unlicensed rod and line.
79. The procedure will be reviewed after it has been in operation for a reasonable amount of time. Subject to this review of the initial three offences, we would seek to add a wider range of summary-only non-imprisonable offences through secondary legislation.

Measure (c): Enable magistrates' courts to proceed with the 'allocation decision' procedure for TEW cases in writing/online without the need for a magistrates' court hearing

80. This measure will amend the MCA 1980 and the CrimPRs so that adult defendants, who indicate a not-guilty plea in writing/online to an offence TEW, can be provided with the choice to proceed with the allocation decision procedure for their case in writing/online via the new Common Platform, without the need for a hearing at a magistrates' court. A defendant will need to be represented by a solicitor in order to proceed with the new written/online allocation decision procedure due to restricted public access to the Common Platform and this will typically form part of the same online session as the initial indication of written/online plea (as per the explanations provided under paragraph 62 of measure (a) above).
81. It will not always be appropriate for the court to provide a defendant with the choice to proceed with the allocation procedure in writing/online, so the CrimPRs will make provisions about the circumstances in which the new written/online procedures cannot be used for a case. This will ensure that the court can proceed to deal with the allocation decision via a defendant's appearance at a traditional court hearing where this is more appropriate.
82. Where a defendant has been provided with the option to engage with the new written/online allocation decision procedure but does not want to engage in this way or fails to engage with the new procedure through to a satisfactory conclusion, they will be required to appear at a traditional magistrates' court hearing to deal with the allocation decision as normal. If a defendant chooses to proceed with the new written/online allocation decision procedure, the communication of any details, representations by interested parties, and considerations by the court will also be facilitated in writing/online via the Common Platform.
83. Where a magistrates' court reaches an allocation decision that a jury trial at Crown Court will be more suitable or where a defendant elected for this mode of trial, the court will be able to send the case for trial to the Crown Court remotely, without the need for a first hearing at the magistrates' court if it is appropriate to do so in the circumstances (see measure (f) below). The defendant will then make their first appearance at a Crown Court hearing instead in order to enter a binding plea before they are tried, convicted, or sentenced.
84. The written/online allocation decision procedure will differ for children under the age of 18 years because unlike adults, they do not have the right to elect for a jury trial at Crown Court.

Measure (d): Provide magistrates' courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at Crown Court

85. This measure will amend the MCA 1980 by adding a new step to both the existing at-court procedures and new online/written procedures for plea-before-venue that will be applicable to adult defendants who indicate a not-guilty plea to a TEW offence at a magistrates' court hearing or in writing/online. The new step will enable a magistrates' court to "invite" a defendant to inform the court that they would not consent to a summary trial if offered one, before the court was required to proceed with the allocation decision procedure.

86. Where a defendant accepts the court's 'invitation', the defendant will proceed to inform the court that they would not consent to a summary trial in any event and in doing so, would exercise their right to elect for a jury trial at Crown Court. The magistrates' court will then bypass the otherwise redundant allocation decision procedure and instead proceed to send the defendant for trial to the Crown Court (remotely or at a court hearing depending on the method of engagement and circumstances of the case).
87. Where a defendant declines, fails, or refuses the court's 'invitation', the court will proceed as normal with the subsequent required allocation decision procedure.

Measure (e): Enable magistrates' courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants who fail without good cause to appear at court for their hearing

88. This measure will amend the MCA 1980 so that magistrates' courts will be able to proceed with the plea-before-venue and allocation decision procedures for TEW offences in an adult defendant's absence in a wider range of circumstances than the law currently allows, so long as the court does not consider that there is an acceptable reason for their failure to appear and is satisfied that it is in the interest of justice to do so. This could include for example, cases where an unrepresented defendant held on remand in custody refused to leave their cell or where a defendant absconded whilst on bail.
89. In a case where an allocation decision was reached by a magistrates' court in a defendant's absence, the defendant will be assumed to have indicated a not-guilty plea and the magistrates' court will proceed to allocate the case for summary trial or send the case for jury trial on indictment, depending on the most suitable mode of trial. If an adult defendant's TEW case was allocated in their absence for a summary trial, the adult defendant will retain the right to elect for a jury trial at the Crown Court up until the summary trial begins, depending on the reasons why they failed to appear and so long as the court deems it is in the interest of justice.⁹
90. Where a defendant fails to appear at court on the day of their trial (having been allocated in absence), the court will have the option to try and convict the defendant in their absence if it is satisfied that the defendant has been properly notified of the proceedings and it is not contrary to the interests of justice to do so.¹⁰ However, the court will need to issue an arrest warrant and bring the defendant before the court for a sentencing hearing if it wishes to impose a custodial sentence.
91. The measure will also amend the MCA 1980 so that a magistrates' court or Youth Court may proceed with the plea-before-venue and allocation procedure for an indictable case prosecuted against a child in the child's absence under one additional new set of circumstances. However, the conditions that will need to be met will be more stringent than those prescribed for adults and will be defined in primary legislation as being where: the child has failed to appear at the hearing; an invitation to provide a written/online indication of plea has been served on the child and they have failed to provide one; either the court is satisfied that notice has been served on the defendant in good time or the defendant has appeared at court on a previous occasion to answer the charge; the court does not consider that there is an acceptable reason for the child's failure to appear; and the court is satisfied that it would not be contrary to the interests of justice to proceed in the child's absence.

⁹ Existing legislation under section 14 of the MCA 1980 would also enable a defendant to make a statutory declaration to restart the proceedings against them if they did not know of the summons/requisition or proceedings brought by summons/requisition until after the court had begun to try the case.

¹⁰ Magistrates' courts also have an existing power under section 142 of the MCA 1980 to set aside such a decision (without being subject to any time limit) where it appears to it to be in the interests of justice to do so.

92. Magistrates' courts and Youth Courts will have the discretion to adjourn the proceedings instead of proceeding in absence, so that the allocation decision procedure can be dealt with in the defendant's presence at a later court hearing (for example, by issuing a warrant for their arrest) where the court considers this to be more appropriate in the circumstances.

Measure (f): Enable magistrates' courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates' court

93. This measure will amend section 51 and 51A of the CDA 1998 so that magistrates' courts can send defendants of all ages who are prosecuted for IO and offences TEW to the Crown Court for trial, without the need for any prior hearings in a magistrates' court. The fact of sending will be communicated to the defendant in writing/online and the magistrates' court will be required to give certain documents to the defendant which explain: the offence they are being prosecuted for; that the court is required to send them for trial to the Crown Court; and any other relevant information that is required by the CrimPRs.
94. The magistrates' court will be able to use this power in the case of defendants prosecuted for IO and TEW offences no matter how the prosecution had been initiated (i.e. by police charge, postal requisition, or summons). It will be a discretionary power, and the magistrates' courts will only deem that a case is suitable to be sent in this manner where it is appropriate to issue bail on the papers (e.g. where the court was content to grant unconditional bail or issue bail subject to the same conditions mandated by police bail).
95. Where a defendant chooses to indicate a not-guilty plea in writing/online to a TEW offence and the allocation decision procedure is completed in writing/online (see measure (a) and (c) above), a magistrates' court will be able to use this measure to send the case without a hearing to the Crown Court for the purpose of trial.
96. Where an adult defendant chooses to indicate a guilty plea in writing/online to a TEW offence (see measure (a) above), a magistrates' court will be able to use this measure to send the case without a hearing to the Crown Court for the purpose of sentencing if it deems its own sentencing powers to be inadequate for the case.
97. Where a magistrates' court decides to send an IO offence to the Crown Court for trial without holding a hearing first, the court will have sought a written/online indication of how a defendant intended to plead at Crown Court for the purpose of case management. (Similar to how it currently works at a traditional first hearing where by a magistrates' court seeks an indication of how a defendant intends to plead at Crown Court for an IO offence when it decides to send the case to the Crown Court for trial (see paragraph 23).
98. Children under the age of 18 years will be subject to the same additional functions regarding the notification of a parent or guardian (see measure (a) above).

Measure (g): Remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas

Replacement of LJAs

99. This measure will amend the current provisions which require the allocation of cases and assignment of magistrates to LJAs. Primary legislation will be amended so that magistrates' courts are no longer divided into separate geographic jurisdictions and will instead create a more unified magistracy and a new set of principles for deciding how work and magistrates are allocated. The provision will require a number of consequential amendments to existing legislation in order to remove and replace references to LJAs; however, the legislation will include a delegated power which will allow any references to LJAs to be amended through secondary legislation.
100. Allocation arrangements will specify the factors that need to be taken into account when assigning the location of magistrates and their cases; thus, giving courts the freedom and flexibility to manage their caseloads most efficiently. Proximity between the court and the offence will remain an important consideration (in accordance with the principle of local justice), while also allowing for other factors to be considered, such as minimising delay and ensuring the most convenient option for victims, defendants and witnesses. Magistrates will still be assigned to a home court but will have the flexibility to work elsewhere should they wish to do so and the need exists.
101. This measure will also allow the enforcement of fines and community orders to be undertaken in any magistrates' court, so they are not confined to a specific LJA as at present.¹¹ It will also enable offenders serving community orders to be supervised by the nearest court and will enable the supervising body to transfer supervision if the defendant moves, without the need for a time-consuming court process. In addition, it will mean that action on default of payment or breach of orders could be carried out more swiftly and effectively at a courthouse close to where the defendant lives or is arrested. It will also mean that all proceedings against a defendant - new criminal charges, default, and breach – could be dealt with holistically in a single hearing, with a reduced administrative burden on HMCTS.

Restructuring leadership and management arrangements for magistrates

102. This measure is also an opportunity to improve and enhance the leadership structures of the magistracy. LJAs have been enlarged over the last 15 years to deal more efficiently with the business of the court. However, this has led to very large benches which can place unreasonable pressures on bench leaders and makes communication more difficult.
103. With the removal of LJAs, the current arrangement for bench structures (including bench chairs and deputy chairs), and training, approval and authorisation will be removed from primary legislation. The detail of such arrangements will be non-statutory, by way of a protocol, to help ensure greater flexibility and judicial control. This means that the future leadership and organisation of magistrates will become a matter for the judiciary, in the same way as in other jurisdictions.
104. **Measure (h): Enable the Crown Court to return certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' courts sentencing powers are deemed to be sufficient) in a wider range of circumstances**

¹¹ For example, where a defendant arrested in Manchester for a new theft matter informs the court that he has outstanding warrants in Somerset for the non-payment of fines, current statutory restrictions prevent the court in Manchester from dealing with those other financial penalties. The fines would either have to be transferred by the court in Manchester or the defendant would have to attend the court in Somerset, or the Manchester magistrates be temporarily reassigned to Somerset.

105. This measure will extend the circumstances in which the Crown Court is able to return a defendant who has allegedly committed a triable either-way offence to the magistrates' court (including to the Youth Court) for trial and/or sentence. The intention is that this transfer back to the lower court will happen if the Crown Court is satisfied that the case can be appropriately dealt with in the magistrates' courts in accordance with the current allocation guidelines.
106. In such circumstances, where the defendant pleads not-guilty and does not wish to elect for jury trial, the Crown Court could return the case to a magistrates' court to be tried summarily where the court considers that magistrates have jurisdiction (and in accordance with any allocation guidance). Where the defendant pleads guilty, the Crown Court could return the case to a magistrates' court for sentencing if satisfied that the magistrates' court would have adequate sentencing powers to deal with the case.

Measure (i): Remove the statutory requirement to hold court hearings in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made 'on the papers' instead in accordance with the CrimPRs

107. This measure will amend legislation to enable or facilitate the making of certain preliminary decisions to lift reporting restrictions and determine applications for a witness summons, based on documents before the court, without the need for a hearing. Taking into consideration any representations made by parties, the decision whether to hold a hearing in these circumstances will always be for the court, which will have to comply with fair trial rights.

Measure (j): Remove the statutory requirements for documents to be sent by post so that they can be served in accordance with the CrimPRs, including by electronic means via the new Common Platform

108. This measure will amend primary legislation so that documents in criminal court proceedings can be served in accordance with CrimPRs. As a result of this change, the service of such documents will be completed by whichever means is the most appropriate in any given case, including by electronic means via the new Common Platform.

Measure (k): Create a power for Ministers to vary, by regulations, the limit on magistrates' court sentencing powers, between maxima of 6 months and 12 months imprisonment.

109. This measure is designed to complement existing policy that will extend magistrates' court sentencing powers from a maximum of 6 months to 12 months imprisonment for a single triable-either-way offence. This measure will allow for the sentencing limit to be varied back to 6 months if the existing legislation has been commenced, or increased again to 12 months, should the need arise. This power is not being used to commence the legislation but ensures that there is flexibility to respond to changing circumstances in the future.
110. There is no limit to the number of times this variation power can be used, but the power is intended to be used only in the event that unsustainable adverse pressures materialise on the criminal justice system as a direct result of this policy. It may then be appropriate to use the power again to increase sentencing powers back to 12 months if solutions are found to alleviate pressures in the system .

E. Cost Benefit Analysis

111. 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.

112. 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.
113. The costs and benefits of Option 1 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). The impacts of Option 1, however, depend on a number of modelling assumptions (set out in the Risks and Assumptions section below) and cannot be regarded as firm predictions.

Some measures are also likely to interact with each other and affect cost and benefit figures over the appraisal period. For example, the use of measure 1(f) for TEW cases is dependent upon the use of measures (a) and (c) beforehand (i.e. eligible defendants indicating a plea online and engaging with the allocation decision procedure online).

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

- Price base year of 2021/22
- 10-year appraisal period beginning 2021/22
- Discounting base year of 2021/22
- Optimism bias and inflation is applied to costs and benefits where appropriate. The levels of optimism bias for each measure are given in the relevant part of section F of this IA.

Measure (a): Enable defendants to indicate a plea in writing/online without the need for a magistrates’ court hearing for all summary-only (SO), indictable-only (IO), and triable either-way (TEW) offences

Costs of Measure (a)

Monetised costs

HMCTS

115. To enable the technical delivery of measures (a) and (c) there is a requirement to build the ability to complete the process online. This will be built through the Common Platform. This will cost roughly £0.49m. It is difficult to split out how much of this cost is due to (a) and how much is due to (c), it has been assumed that half goes to each. This cost falls in 2022/23.
116. The process will be mostly automated and may require a little staff time for coordination. While it has not yet been decided who will do this, it is assumed for the purpose of this IA that this role will be carried out by legal advisers and will require 10 minutes per case. As legal advisers are currently required in court under the Do-Nothing option for approximately 5 minutes per case, the cost of an additional 5 minutes of Legal Adviser time has been estimated.
117. Given this will be a new system, it is not clear what proportion of eligible defendants will engage online. For the purposes of this IA we have assumed 60% in steady state, which leads to a staff cost of £1.7m per year.

Non-monetised costs

LAA

118. There is a cost for the LAA associated with changing their service design to ensure that legal representation is available for defendants indicating a written/online plea, where duty solicitors will no longer be engaging with defendants at the first magistrates' court hearing. Currently this cost is not monetised, as the LAA are exploring a number of different change options.

CPS

119. There may be additional administrative costs to the CPS as the new processes will mean more activities are moved online. However, until the future service design model for the CPS has been finalised, these costs cannot be quantified.

Benefits of Measure (a)

Monetised benefits

HMCTS

120. Under the Do Nothing option, a bench of magistrates or a DJ, a legal adviser, a court usher, the defence and the prosecution are all required in court for a defendant's plea. The magistrate (or DJ) then runs through several case management questions, which determine which case management processes need to be requested.
121. Under Measure (a), where a defendant engages and indicates a written plea online, they will then provide their case management information on an online form. The online system will then use this information to request the appropriate case management processes. The process will be largely automated, removing the need for magistrates, DJs, court ushers and admin staff to be present, resulting in staff cost savings of £3.2m per year.
122. Those defendants that do not indicate a plea online for SO or TEW offences, or whose IO offence is not sent remotely to the Crown Court, will have a backstop hearing which follows the current process, therefore there will be no change in costs for this group.

Defendants, Solicitors

123. Removing the need to come to court for plea, case management, allocation and sending means that defendants and solicitors can save on travel time. Regional analysis of populations together with courts' location 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 annual saving of £3.0m. Note that this covers measures (a) and (c) as if one is enacted without the other then defendants and solicitors would still need to attend court.

Legal aid providers

124. There may be some resource savings to legal aid providers from attending fewer physical hearings in the magistrates' court.

Wider benefits

125. Reducing travel to court also reduces carbon emissions. Using the value per tonne of carbon dioxide, this is calculated to save £0.05m per year.

Non-monetised benefits

126. The JR&C Bill will allow defendants to indicate pleas in writing/online. There may be resource savings to the CPS associated with the removal of the first hearing in the magistrates' and Crown Courts for TEW and IO cases respectively in cases where the plea does not change upon first appearance in court and all case progression work, including allocation and sending decisions, take place outside of the court room.

Legal aid providers

127. There may be some resource savings to legal aid providers from attending fewer physical magistrates' court hearings.

Measure (b): Implement a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified SO non-imprisonable offences, which will enable defendants who wish to plead guilty to choose to have their entire case completed online without the involvement of the court.

Costs of Measure (b)

Monetised costs

MoJ

128. Under this measure, the standard penalties for the initial three offences in scope will be:

Table 1: Measure (b) Standard Penalties

Offence	Rail Fare Evasion	Fishing Offences	Tram Fare Evasion
Standard penalty	£195	£150	£90

129. Individuals who would receive a below-standard fine under the SJP, and who may therefore choose not to accept the automatic online conviction option, are assumed to continue to go through the SJP and to receive the fine they otherwise would have done (i.e. a fine lower than the standard penalty for the offence).

130. Conversely, individuals who would receive an above-standard fine under the SJP, are assumed to opt into the automated procedure and receive the standard penalty. This is because the standard penalty will be lower than the amount they would have been ordered to pay under the SJP. This would represent a loss in the total value of impositions for the MoJ.

131. The table below presents the best estimate of the opt-in rates for people who do engage, based on the assumptions described above, and the associated volumes:

Table 2: Measure (b) Opt-in Rate

Offence	Rail Fare Evasion	Fishing Offences	Tram Fare Evasion
Opt-in rate (among those who engage)	22%	23%	8%
Volume of cases	1,350	250	600
Total volume of cases	2,200		

132. The table below presents the estimated loss in the total value of impositions for each offence:

Table 3: Measure (b) Imposition Loss

Offence	Rail Fare Evasion	Fishing Offences	Tram Fare Evasion
% Annual Imposition Loss	0.5%	3.0%	4.5%
Annual Imposition Loss (£m)	0.03	0.01	0.04
Total Imposition Loss (£m)		0.08	

133. In practice, some defendants who would receive a fine under the SJP which is lower than the standard penalty but is within a certain margin of it, might opt in because they are prepared to pay a certain margin for the speed and certainty of the automatic process. If this were to occur, the loss of impositions to the MoJ would decrease.

Non-monetised costs

HMCTS

134. There will be IT costs to HMCTS for the development, operation and maintenance of the online system. However, as it is not possible to isolate these costs from the wider costs of digitisation and modernisation under the HMCTS Reform programme, they cannot be monetised.

135. There may also be a perceived lack of fairness in the new system insofar as it is no longer means-tested, allowing those with higher incomes to reduce the imposition they receive.

Benefits of Measure (b)

Monetised benefits

HMCTS

136. Efficiency savings, in the form of reduced staff costs, are expected as a result of sentencing approximately 2,200 offenders annually through the online system instead of the SJP. The time saved for magistrates and legal advisers from no longer processing these offenders through the SJP is estimated to save approximately £2,400 per year.

Non-monetised benefits

HMCTS

137. The ease of access of the online system, coupled with the certainty of the fine amount to be issued, may increase the rate of engagement from defendants. Once a defendant has accepted a conviction, they will be given the option to pay the penalty there and then online. This simple way of resolving their case may encourage defendants to pay their penalty immediately, leading to improved fine collection rates and reduced enforcement costs. Given the uncertainty around any change in behaviour, it is not possible to monetise this impact.

138. If defendants are encouraged to engage in the court process by the new simpler system, there may be a reduction in the number applying to the court to make a statutory declaration. This is where a defendant who does not engage with the court system and receives a conviction through the SJP can state that they knew nothing about the proceedings. This requires the whole court process to start over again, therefore a reduction in statutory declarations will reduce costs, although it is not possible to monetise the potential reduction.

Defendants

139. The automatic online conviction procedure will allow defendants who opt into it to resolve their case more quickly than through the SJP. SJP cases can take 21 days to be processed, a timeframe which is out of the defendant's control, whereas the defendant will be able to complete the proposed new online process, including payment of the penalty, as soon as they receive the written notice of the charges against them.

140. This procedure will also give defendants certainty of the penalty that will be imposed on them, before they accept the conviction.

141. Therefore, while the SJP already enables defendants to resolve their case without travelling to court, the automatic online conviction procedure offers defendants greater choice and greater control over the process.

Measure (c): Enable magistrates' courts to proceed with the 'allocation decision' procedure for TEW cases in writing/online without the need for a magistrates' court hearing.

Costs of Measure (c)

Monetised costs

HMCTS

142. To enable the technical delivery of measures (a) and (c), there is a requirement to build the ability to complete the process online. This will be built through the Common Platform and will cost roughly £0.49m. As it is not possible to apportion the cost between the two measures, it is assumed half of this cost, £0.24m, falls under each. This cost will be incurred in 2022/23.

143. The online allocation and sending will be dealt with by one magistrate and legal adviser. A small proportion of cases will require escalation, the majority to a further magistrate and legal adviser and a minority to a district judge. This leads to an annual cost of £0.56m.

Non-monetised costs

CPS

144. Currently in TEW cases, a defendant will enter a plea during their first hearing in the magistrates' court. As this plea is binding, if a defendant makes a guilty plea at the magistrates' court, the Crown court can move straight to sentencing when they arrive. In future defendants will indicate a plea online, but this will not become binding until they confirm it in court.

145. There is therefore a risk that defendants change their plea on arrival in the Crown Court. If they change their plea from not-guilty to guilty, then a proportion of the CPS's file preparation will be wasted.

146. How much of an impact this will have therefore depends on how reliable indicated pleas are. At present, the CPS already try and predict before a first hearing whether a defendant will plead guilty or not-guilty (for example, if there is CCTV footage of the defendant committing the crime, they may predict a guilty plea). Therefore, whether there will be more or less wasted CPS file preparation work depends on whether plea indications are more accurate than CPS's own predictions. As this is uncertain, the potential cost cannot be monetised.

HMPPS

147. Similarly, if a defendant changes their plea from guilty to not-guilty, and is found not-guilty at trial, then any pre-sentence report prepared will not be used and will also be wasted work. As it is unclear how reliable plea indications will be, the potential costs cannot be monetised.

HMCTS

148. Alternatively, if the defendant changes from guilty to not-guilty the CPS will have under-prepared the case files and will need to prepare files for the next appearance in court, potentially delaying the case and increasing cost.

Benefits of Measure (c)

Monetised benefits

HMCTS

149. Under the Do Nothing option, a bench of magistrates or a DJ, a legal adviser, the defence and the prosecution are all required in court for the allocation and sending of TEW cases. Under Measure (c), where a defendant is allocated and sent online, this is no longer required. Assuming 60% of eligible TEW cases are allocated and sent online, this leads to a saving in staff costs of £0.74m.

Non-monetised benefits

Legal aid providers

150. There may be some resource savings to legal aid providers from attending fewer physical magistrates' court hearings.

Measure (d): Provide magistrates' courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at Crown Court.

Costs of Measure (d)

Monetised costs

HMCTS

151. It has not been possible to identify any monetised costs associated with this measure.

Non-monetised costs

HMCTS

152. It has not been possible to identify any monetised costs associated with this measure.

Benefits of Measure (d)

Monetised benefits

HMCTS

153. It has not been possible to identify any monetised benefits associated with this measure.

Non-monetised benefits

154. Giving defendants an earlier opportunity to elect for jury trial means that, in some cases, magistrates will not have to go through the allocation process, so saving time and therefore staff costs. However, it is unclear how many defendants will take this earlier opportunity and, at least to start with, the percentage is expected to be low.

Measure (e): Enable magistrates' courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants who fail without good cause to appear at court for their hearing.

Costs of Measure (e)

Monetised costs

HMCTS

155. It has not been possible to identify any monetised costs associated with this measure.

Non-monetised costs

HMPPS

156. Currently, the absence of a defendant can slow down the progress of a case. In some cases, this may mean witnesses and victims disengage, which can mean there is not enough evidence to convict a guilty defendant. By partly addressing this issue, this measure could mean more defendants are convicted, increasing costs to HMPPS. There is uncertainty around the potential increase in convictions, therefore it has not been possible to monetise this cost.

Benefits of Measure (e)

Monetised benefits

HMCTS

157. It has not been possible to identify any monetised benefits associated with this measure.

Non-monetised benefits

HMCTS, CPS, LAA

158. This measure could reduce the number of ineffective court hearings, and thus reduce the cost to HMCTS, CPS and LAA. As this is uncertain, this benefit has not been monetised.

HMPPS

159. It could reduce the time defendants spend in custody pending trial which would reduce costs to HMPPS. As this is uncertain, this benefit has not been monetised.

Police, CPS

160. There could be a reduction in cost to the police and CPS in compelling disengaged witnesses from attending delayed trials. As this is uncertain, this benefit has not been monetised.

Victims

161. This measure could allow trials to proceed more quickly, giving victims more certainty in the process.
162. Any potential increase in convictions could also directly benefit victims, as justice is delivered and it would provide them with closure.

Measure (f): Enable magistrates' courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates' court.

Costs of Measure (f)

Monetised costs

163. It has not been possible to identify any monetised costs associated with this measure.

Non-monetised costs

HMCTS

164. For cases deemed suitable for remote sending, defendants will have also been extended an invitation to indicate a plea online. This sending process will be straightforward, although it will result in marginal IT costs to HMCTS.

Benefits of Measure (f)

Monetised benefits

HMCTS

165. Under the Do Nothing option, a bench of magistrates or a DJ, a legal adviser, and court usher are all required in court to send IO cases to the Crown court for trial. Under this measure, the sending process will be completed remotely without a hearing. This is assumed to be 60% for the purpose of this IA, leading to a saving of £0.18m per year.
166. The savings associated with the sending process for TEW cases have already effectively been captured as part of the monetised benefits for measure (c) above. This is because measure (c) already removes the need for a first hearing in the magistrate's court for TEW cases.

Defendants, Solicitors

167. Removing the need to come to court for sending means that defendants and solicitors can save on travel time. Regional analysis of populations together with courts location 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 annual saving of £0.74m.

Wider benefits

168. Reducing travel to court also reduces carbon emissions. Using the value per tonne of carbon dioxide, this is calculated to be a benefit of £0.01m per year.

Non-monetised benefits

Legal aid providers

169. There may be some resource savings to legal aid providers from attending fewer physical magistrates' court hearings.

Measure (g): Remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas.

Costs of Measure (g)

Monetised costs

HMCTS

170. It has not been possible to identify any monetised costs associated with this measure.

Non-monetised costs

HMCTS

171. The implementation costs for this provision are expected to be minimal.

172. Any ongoing costs are expected to be minimal and may include some increased claims for travel from magistrates. However, some magistrates may have shorter journeys as a result of this measure.

Benefits of Measure (g)

Monetised benefits

HMCTS

173. The equivalent of approximately 20 full-time court employees is currently required to process Transfer of Fine Orders (TFOs). Assuming an average annual salary of £25,000 in 2021/22 prices, it is estimated that removing the need for TFOs could present an efficiency saving for HMCTS of £0.50m per year.

Non-monetised benefits

HMCTS

174. Allowing the transfer of cases between magistrates' courts that sit in different LJAs will increase the number of courts that over-utilised courts can refer cases to. This will enable cases to be allocated in a way that optimises court efficiency.
175. The benefit of reforming LJAs and having national enforcement is that defendants will be able to be tracked more easily, even when they move to different areas of England and Wales. The court will have all the information in one place without having to refer to another LJA and be able to take enforcement action irrespective of where the case was originally heard. The associated savings have not been monetised as collating the necessary data on the movement of defendants is not deemed proportionate for the purpose of this IA.
176. There are likely to be minor savings associated with a reduction in the administrative costs associated with each LJA, including training and annual meetings which will be organised on a more regional level.

Measure (h): Enable the Crown Court to return certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' court's sentencing powers are deemed to be sufficient) in a wider range of circumstances.

Costs of Measure (h)

Monetised costs

HMCTS

177. Under this measure the number of defendants tried and sentenced in the magistrates' courts is expected to rise, resulting in a cost to the magistrates' courts.
178. Crown Court Data for TEW cases is split into two categories: defendants indicating a Not-Guilty Plea (NGP) and those indicating a Guilty Plea (GP). NGPs results in a trial, with the outcome of this either an acquittal or the court finding the defendant guilty. It is assumed that GPs will result in a sentencing hearing only.
179. The maximum sentence within magistrates' powers for a single offence is a 6-month custodial sentence. Therefore, all custodial sentences of up to 6 months, suspended sentences of up to 6 months, discharges, fines and community sentences are within the sentencing powers of a magistrate's court. Consecutive custodial sentences, including suspended sentences, totalling no more than 12 months may also be imposed for two or more either way offences. Defendants who received such sentences in Crown Court could theoretically have had their case heard in the magistrates' courts.
180. Using the criteria for single offences only against 2019 sentencing data for TEW defendants, and accounting for the average jury trial election rate (14% in 2019), suggests that approximately 1,200 NGP trials would be eligible to be returned back to the magistrates' courts. However, as the defendant's consent would be required where a trial is to be returned, it is anticipated that very few trials will be returned. It is assumed that only 5% of NGP cases will be returned back to the magistrates' courts, resulting in a cost of £0.29m.

181. Applying the same methodology but for defendants indicating a guilty plea, approximately 12,500 defendants would be eligible to have their cases returned to the magistrate's court. While a defendant's consent is not required where a case is being returned for sentencing only, sentencing hearings take relatively little time compared to a full trial. The Crown Court may therefore be less inclined to return a case back to the magistrates' courts for sentencing only. It is therefore assumed that 10% of GP cases will be returned back to the magistrates' courts, resulting in a cost of £0.70m.
182. The total cost of this measure to the magistrates' courts is estimated to be £1.0m. Further detail on the methodology used is provided in Section F on Assumptions & Risks, as well as sensitivity analysis exploring changes in the percentages returned.

Non-monetised costs

HMCTS

183. Under this measure, a new general power will be created whereby the Crown Court can return certain either way offences back to the magistrates' courts, for either trial or sentencing, where the Crown Court is satisfied that the case can be appropriately dealt with in the magistrates' courts in accordance with the current Allocation Guidelines. Therefore, there will be a cost associated with exercising this power as compared to the status quo, i.e. the cost stemming from the time spent by a judge and an authorised court staff member on reviewing the suitability of the case for either summary trial or sentencing.
184. The decision to return an adult defendant for trial will require their consent, which must be done in the presence of the defendant in court, unless they agree for it to be done in their absence on the papers. This will mean that sometimes the decision will be made in court and, at other times, outside of a court hearing. The costs of exercising this new power have not been quantified as it is not known how long it would take for such a decision to be made, as the judiciary and court staff cannot currently use this power.

Benefits of Measure (h)

Monetised benefits

HMCTS

185. A primary objective of this measure is to make more efficient use of Crown Court time. Under this measure the number of defendants tried and sentenced in the Crown Courts is expected to decrease, resulting in a cost-saving to the Crown Court.
186. As set out above and carrying the same assumptions, if the Crown Court returns 5% of eligible NGP cases this will result in a cost-saving of £0.39m.
187. Likewise, for GP cases if we assume that 10% of the cases will be returned, this will result in a cost-saving of £0.91m.
188. The total saving to the Crown Court is estimated to be £1.3m.

Non-monetised benefits

CPS

189. As per the overall HMCTS savings associated with returning defendants from the Crown Court back to the magistrates' courts, where cases are relatively cheaper to complete, there will be associated savings for the CPS.

LAA

190. Legal aid bills are submitted for both the initial work undertaken in the Crown Court and when defendants are returned back to the magistrates' court. Referring defendants back to the magistrates' courts could enable savings to the LAA, as the legal aid costs for cases heard in the magistrates' courts are generally lower than those for Crown Court cases.

191. However, under current legal aid fee scheme regulations, any such savings are likely to be partially or fully offset by legal aid bills for the initial preparation work undertaken for the Crown Court before the cases are returned to the magistrates' court. It has therefore not been possible to monetise this benefit as the magnitude of any future savings will depend on whether there are future revisions to legal aid fee structures to account for this measure.

HMCTS, Jurors

192. When a TEW defendant's case is tried in the magistrates' court instead of the Crown Court, this avoids the need for a jury trial. Consequently, there will be a reduction in:

- The total costs incurred by HMCTS in summoning adults for jury service;
- The total expenses paid to serving jurors by HMCTS;
- The indirect loss to UK GDP of having serving jurors who are in paid employment being temporarily diverted from their jobs.

193. Given the uncertainty around the estimated number of Crown Court defendants returned to the magistrates' court for trial each year, the benefit of the reduced demand for jurors has not been quantified.

Court Users

194. The aim of this measure is to ensure more efficient use of the Crown Court as it will reduce time taken up by cases which can be dealt with by the magistrates' court. It may therefore allow cases to be heard more quickly in the Crown Court.

Measure (i): Remove the statutory requirement to hold court hearings in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made 'on the papers' instead in accordance with the CrimPRs.

Costs of Measure (i)

Monetised costs

HMCTS

195. It has not been possible to identify any monetised costs associated with this measure.

Non-monetised costs

HMCTS

196. It has not been possible to identify any non-monetised costs associated with this measure.

Benefits of Measure (i)

Monetised benefits

HMCTS

197. It has not been possible to identify any monetised benefits associated with this measure.

Non-monetised benefits

HMCTS

198. This measure is expected to yield some cost savings due to the court holding fewer hearings. However, these are expected to be limited and have therefore not been monetised. There are a relatively low number of applications dealt with 'on the papers' because the majority of them arise during the trial process itself or accompany other preliminary matters being discussed. In addition, whether or not to hold a hearing will be at the judge's discretion. Any savings depend on how often they take the option not to have a hearing.

Defendants and witnesses

199. There will also be non-monetised benefits in terms of travel costs and time saving to parties to the case and witnesses from not having to physically attend court unnecessarily. These have not been monetised as it is unclear how large the reduction in hearings will be.

Legal aid providers

200. There may be some resource savings to legal aid providers from attending fewer physical magistrates' court hearings.

Measure (j): Remove the statutory requirements for documents to be sent by post so that they can be served in accordance with the CrimPRs, including by electronic means via the new Common Platform.

Costs of Measure (j)

Monetised costs

HMCTS

201. It has not been possible to identify any monetised costs associated with this measure.

Non-monetised costs

HMCTS

202. The cost of moving to the digital service of documents is unquantified in this IA as it belongs with the non-legislative operational cost associated with HMCTS's development and implementation of the CJS Common Platform.

Benefits of Measure (j)

Monetised benefits

HMCTS

203. It has not been possible to identify any monetised benefits associated with this measure.

Non-monetised benefits

HMCTS

204. Electronic service will improve the timeliness and efficiency of case progression and will give the party serving the document reassurance that it has been received. It will also reduce postage costs for HMCTS. These benefits have not been monetised as it is uncertain what percentage of the time documents will be served by digital means. The most appropriate means of service (including service by electronic means) can be used in any given case, taking into account the preferred method of those receiving the documents and their access to digital and online communications.

Victims, defendants

205. Electronic service should also create a more user-friendly and consistent criminal justice system.

Measure (k): Create a power for Ministers to vary, by regulations, the limit on magistrates' court sentencing powers, between maxima of 6 months and 12 months imprisonment.

206. As the powers that already exist to extend magistrates' courts sentencing powers to 12 months' imprisonment have not been commenced, this measure currently has no impact as it cannot be used. There are therefore no associated costs or benefits.

207. A separate full Impact Assessment with economic appraisal of the costs and benefits of extending magistrates' courts sentencing powers will be published at the time of commencement of these powers.

Overall Summary of Option 1

208. The NPV of each measure is presented in the table below, as well as the overall NPV of Option 1.

Table 4: Overall Summary of Option 1

Option 1	NPV (£m)
Measure (a): Enable defendants to indicate a plea in writing/online without the need for a magistrates' court hearing for all summary-only (SO), indictable-only (IO), and triable either-way (TEW) offences	25.5
Measure (b): Implement a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified SO non-imprisonable offences, which will enable defendants who wish to plead guilty to choose to have their entire case completed online without the involvement of the court.	-0.49
Measure (c): Enable magistrates' courts to proceed with the 'allocation decision' procedure for TEW cases in writing/online without the need for a magistrates' court hearing.	0.89
Measure (d): Provide magistrates' courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at Crown Court.	N/A

Measure (e): Enable magistrates' courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants who fail without good cause to appear at court for their hearing.	N/A
Measure (f): Enable magistrates' courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates' court.	5.0
Measure (g): Remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas.	2.9
Measure (h): Enable the Crown Court to return certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' courts sentencing powers are deemed to be sufficient) in a wider range of circumstances.	2.4
Measure (i): Remove the statutory requirement to hold court hearings in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made 'on the papers' instead in accordance with the CrimPRs.	N/A
Measure (j): Remove the statutory requirements for documents to be sent by post so that they can be served in accordance with the CrimPRs, including by electronic means via the new Common Platform.	N/A
Measure (k): Create a power for Ministers to vary, by regulations, the variation of the limit on magistrates' court sentencing powers, between maxima of 6 months and 12 months imprisonment.	N/A

NPV (£m)	36.3
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F. Risks and Assumptions

209. 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. Where applicable, sensitivity analysis is also presented.

Measure (a): Enable defendants to indicate a plea in writing/online without the need for a magistrates' court hearing for all summary-only (SO), indictable-only (IO), and triable either-way (TEW) offences

210. The main assumptions underlying Measure (a) are as follows:

- The IT necessary for these changes will be rolled out from October 2022. Benefits will only be achieved starting 6 months later, on the assumption that there will not be immediate efficiencies with a new procedure.
- To engage online, defendants must have legal representation. Even if they have legal representation then it is their decision whether or not to engage online. The policy aspiration is that 100% of engagement with pre-trial criminal procedures will occur out of court for legally represented defendants. However, there are some scenarios where such engagement will not be possible or appropriate, for example where there are complex issues raised by the defence or issues of bail, while some defendants may simply prefer to attend court.
- Therefore, it is assumed that 60% of eligible defendants will engage in writing (i.e. online) in steady state. This is expected to be achieved from April 2023.
- All those who engage in writing will engage online rather than by post.

- There is a tendency in any estimation work to overstate benefits and understate costs. A 15% optimism bias has been applied to the total costs and benefits of this measure and included in the calculation of the Net Present Value figure to mitigate this risk.
- As costs and savings are largely driven by staff costs, a 1% inflation rate per year has been applied to all savings and costs.

Measure (b): Implement a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified SO non-imprisonable offences, which will enable defendants who wish to plead guilty to choose to have their entire case completed online without the involvement of the court.

211. The main assumptions underlying Measure (b) are as follows:

- This measure will take effect post April 2023.
- Offender behaviour regarding opt-in rates, as set out in the costs section, will remain constant over the appraisal period.
- The fine element of the standard statutory penalty will be set at the overall average of fines imposed for each offence group. This level is assumed to remain constant over the appraisal period.
- Volumes and impositions are based on 2018/19 data and are assumed to remain constant over the appraisal period.
- Offenders who do not currently engage with the SJP would not engage with the automatic online procedure.
- There is no flag in the impositions data to identify whether an offender has responded to proceedings against them. As a proxy, it is assumed that offenders who receive fines which are multiples of £110 up to £770 have failed to respond, and those with other amounts have responded. This is because sentencing guidelines tell courts to assume weekly income of £440 for non-responders, resulting in an imposition which is a multiple of £110.

Sensitivity Analysis

212. The key assumption in the analysis for this measure is the opt-in rates for each of the offence groups, based on the threshold at which a defendant would opt in or opt out. The central scenario assumes that a defendant would not opt in if their fine under the SJP would be lower than the statutory penalty. This sensitivity analysis presents several lower thresholds such that some of these defendants would choose to opt in (for the benefit of speed and certainty), demonstrating how it affects opt-in rates and total imposition loss.

213. Table 5 below shows how reducing the threshold above which defendants opt into the automatic online conviction procedure would increase the opt-in rate for each offence group:

Table 5: Measure (b) Reduction in Fine Threshold – Opt-in Rate

Offence / Reduction in Fine Threshold	Rail Fare Evasion	Fishing Offences	Tram Fare Evasion
£0	22%	23%	8%

-£10	22%	31%	8%
-£30	32%	39%	15%
-£50	44%	57%	18%

214. Table 6 below illustrates how lowering the fine level at which defendants opt into the automatic online conviction procedure would reduce the total imposition loss:

Table 6: Measure (b) Reduction in Fine Threshold – Imposition Loss

Opt-in Fine Reduction	£0	-£10	-£30	-£50
Total Imposition Loss (£m)	0.08	0.08	0.06	0.01

Measure (c): Enable magistrates’ courts to proceed with the ‘allocation decision’ procedure for TEW cases in writing/online without the need for a magistrates’ court hearing

215. The main assumptions underlying Measure (c) are as follows:

- Most cases will be dealt with by a magistrate and a legal adviser. Of the 10% of cases that require escalations, only 5% of these will be dealt by a district judge.
- Admin staff and ushers will not be required for online allocation.
- There is a tendency in any estimation work to overstate benefits and understate costs. A 15% optimism bias has been applied to the total costs and benefits of this measure and included in the calculation of the Net Present Value figure to mitigate this risk.
- As costs and savings are largely driven by staff costs, a 1% inflation rate per year has been applied to all savings and costs.

Measure (d): Provide magistrates’ courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at Crown Court

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

Measure (e): Enable magistrates’ courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants who fail without good cause to appear at court for their hearing

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

Measure (f): Enable magistrates’ courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates’ court

218. The main assumptions underlying Measure (f) are as follows:

- IT Costs for this measure are likely to be minimal as cases deemed suitable for this measure have also been invited to indicate a plea online. The IT costs of building the platform to enable this have already been covered under measure (a) and (c).
- There is a tendency in any estimation work to overstate benefits and understate costs. A 15% optimism bias has been applied to the total costs and benefits of this measure and included in the calculation of the Net Present Value figure to mitigate this risk.
- As costs and savings are largely driven by staff costs, a 1% inflation rate per year has been applied to all savings and costs.

Measure (g): Remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas

219. The main assumptions underlying Measure (g) are as follows:

- Benefits from this measure will be achieved from April 2023.
- The equivalent of approximately 20 full time court employees is currently required to process Transfer of Fine Orders (TFOs), with an annual salary of £25,000 in 2021/22 prices.

Measure (h): Enable the Crown Court to return certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' courts sentencing powers are deemed to be sufficient) in a wider range of circumstances

220. The main assumptions underlying Measure (h) are as follows:

- The sentence a TEW defendant receives in the magistrates' court will be the same as the sentence they would have received in the Crown Court.
- The rate of election for a jury trial among adult TEW defendants is 14% (based on the 2019 election rate) - these defendants are not eligible to be returned to the magistrates' courts for a trial. This is assumed to remain constant.
- Defendants indicating a Not-Guilty Plea (NGP) would be returned for trial, which is assumed to last nine hours based on court hearing statistics.
- There are 1.2 defendants per trial.
- Defendants indicating a Guilty Plea (GP) would be returned for a sentencing hearing only, which is assumed to last one hour based on court hearing statistics.
- Defendants returned to the magistrates' courts are assumed to have their trial complete and be sentenced at the same point in time as under the Do Nothing option.

Sensitivity Analysis

221. The central scenario is that 5% of NGP defendants and 10% of GP defendants will be referred back to the Crown Court. However, as there is no evidence on which to base this assumption, the table below shows how the NPV changes were the referral rate to be lower or higher.

Table 7: Measure (h) Sensitivity Analysis

Scenario	Low	Central	High
NGP Referral rate	5%	5%	10%
GP Referral rate	5%	10%	25%
NPV (£m)	0.20	0.40	0.70

Measure (i): Remove the statutory requirement to hold court hearings in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made ‘on the papers’ instead in accordance with the CrimPRs

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

Measure (j): Remove the statutory requirements for documents to be sent by post so that they can be served in accordance with the CrimPRs, including by electronic means via the new Common Platform

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

Measure (k): Create a power for Ministers to vary, by regulations, the limit on magistrates’ court sentencing powers, between maxima of 6 months and 12 months imprisonment.

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

G. Wider Impacts

Equalities

225. An Equality Impact Statement has been completed and has been published alongside this IA.

Better Regulation

226. 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

227. There is a positive environmental impact as a result of some of the measures 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

228. The legislative measures detailed in measures (i) and (j) of this IA will automatically become law approximately two months after the JR&C Bill attains Royal Assent. The other legislative measures detailed under measures (a) to (h) will be commenced by regulation once HMCTS has concluded preparation of the administrative, training, and technological infrastructures that will be required to accommodate the operational functionality of these changes.

Measure (b), which introduces the new AOCSSP procedure, will be reviewed after it has been in operation for a reasonable amount of time. Subject to the findings of this review of the initial three offences, we would seek to add a wider range of summary-only non-imprisonable offences to the procedure through secondary legislation.

229. It is intended that measure (k), which creates a power for Ministers to vary, by regulations, the variation of the limit on magistrates' court sentencing powers, between maxima of 6 months and 12 months imprisonment, be used only if necessary. There will be continuous monitoring of the impact that extending magistrates' court sentencing powers has on the criminal justice system in order to respond as appropriate to changing circumstances. A monitoring framework is being developed which will focus on any impact on prison places, rates of election for jury trial and magistrates' courts appeal rates. These will be regularly evaluated and the measure (k) will be used if there is sufficient evidence of an unsustainable adverse effect on the system.

230. The other measures detailed in this IA that form part of the HMCTS court reform programme will be subject to a review in line with the public commitment by HMCTS to evaluate the impact of reform measures once the changes have been in operation for a reasonable amount of time.