

TV Licence Enforcement Review
Ministry of Justice Response 28 March 2015.

Introductory Remarks

- 1 This response considers the 6 options presented in the review consultation document and addresses the following considerations.
 - Value for money for taxpayers
 - Deterrence
 - Ease of enforcement and
 - The practical considerations as they would impact the delivery arms of the Ministry of justice, significantly HM Courts and Tribunals Service including its service users and its enforcement systems.
- 2 The Government will form a collective view on the appropriate sanctions for non payment of a TV licence following publication of the review report. The purpose of this paper is simply to provide – so far as it is available – factual information to help inform the Review’s further considerations. We make no policy choice at this stage

The advantages and disadvantages of the current system, the degree to which it delivers against the Review’s key criteria and its impact on the tax payer

[Review Questions 2 – 5]

- 3 Section 363 of the Communications Act 2003 requires a licence for the installation and use of a television receiver, and makes unlicensed use a criminal offence punishable on conviction by a magistrates’ court with a fine up to level 3 (£1000). Her Majesty’s Courts and Tribunals Service (HMCTS), an executive agency of the Ministry of Justice manages the magistrates’ courts in England and Wales and there are well established and efficient procedures in place to consider these cases.
- 4 In 2013 there were 178,332 prosecutions for TV License evasion¹. The prosecutions brought in the 5 years 2009 to 2013 are at table 1. In 2013 approximately 86% of defendants proceeded against for TV licence fee evasions were convicted. The remainder were acquitted or their cases were discontinued². Of those defendants convicted, 99.5% were fined while most of the remaining convicted defendants were given an absolute or conditional discharge³.
- 5 In determining the fine to be imposed the court will take into consideration seriousness and the financial circumstances of the offender. The average fine imposed for TV Licence evasion in 2013 was approximately £170.⁴

¹ Published figures relate to all prosecutions brought under Wireless Telegraphy Acts, overwhelmingly S.363 Communications Act 2013 prosecutions.

² www.gov.uk/government/uploads/system/uploads/attachment_data/file/311319/8-outcomes-by-offence.xls

³ ibid

⁴ ibid

⁴ ibid

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	2009	2010	2011	2012	2013
Total Proceeded Against	166,944	164,462	170,650	193,049	178,332
Total Found Guilty	148,867	142,386	149,239	164,932	153,369

Table 1 – Prosecution and Conviction Volumes – Wireless Telegraphy Acts⁵

- 6 In many courts TV Licence evasion cases are listed for a single sitting devoted exclusively to TV Licence evasion cases. HMCTS has similar procedures for hearing traffic offences which delivers efficient and effective disposal of these cases.
- 7 The operations of the criminal courts are directly funded by the tax payer through the Ministry of Justice allocation.
- 8 As part of the Government's Impact Assessment on its proposals for the single justice procedure [see paragraph 21] we calculated the cost to HMCTS of the approximately 840,000 high volume low level summary only, non-imprisonable cases heard each year at £28.3m on 2012/13 values.⁶ The average cost works out at approximately £28.00 per case. .
- 9 TV Licence Fee evasion cases are captured within this calculation which includes other case types that are of greater complexity and resources. By using this 2012/13 figure, £28.00 per case, and based on current prosecution volumes (172,940pa) the annual cost to HMCTS of TV Licence prosecutions is likely to be no more than £5m.
- 10 The proportion of magistrate's workload made up in TV licence prosecutions is relatively minor and the extent to which judicial and administrative resources could be reduced limited with minimal scope for cash savings
- 11 In 2013/14 £290.3m in financial impositions including criminal fines were collected by HMCTS⁷. Fines collected are deposited into HM Treasury's Consolidated Fund and contribute to the overall funding of government spending. A Fines Investment Scheme agreement operates between HMCTS and the Treasury which is utilised for further investment in fines collection. The scheme provides that where HMCTS achieves a fines payment rate above 75% it is able to retain 75% of the value above that rate up to a value of £20m.
- 12 The average fine for TV Licence Fee evasion convictions is £170.00. Based on 2013 conviction volumes (153,369) this amounts to an estimated imposition of fines to the value of £26m being levied each year. The actual figure collected will be less than this dependent on collection rates; in addition fines are often revised once means to pay information is provided and some of the imposition will be legally cancelled or administratively written off for a variety of reasons. In 2012 around a third of fines imposed for TV Licence Fee evasion were collected within 12 months⁸.

⁵ *ibid*

⁶ *Streamlining high-volume, low-level 'regulatory cases' in magistrates' courts* Impact Assessment No. MOJ 227. www.gov.uk/government/uploads/system/uploads/attachment_data/file/289202/regulatory-cases-ia.pdf Published 5/2/2014

⁷ www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014

⁸ www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf

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- 13 Offenders convicted of Licence fee evasion will usually, additionally be levied with a Victim Surcharge of £20 per fine, based upon the average fine in 2013. Based on the 2013 conviction figures this will have seen an estimated imposition of approximately £3m. The actual amount received by victims' services will be less than this since not all charges will be collected.
- 14 The government will soon introduce a criminal courts charge that will be levied against all offenders convicted of a criminal offence. The charge that would be levied against persons pleading guilty and convicted of the current offence of TV Licence Fee evasion is likely to be £150. Based on 2013 volumes, if all those convicted received the £150 courts charge it would mean impositions of approximately £23m per year, though we don't expect to recover 100% of the courts charge imposed and some people will opt for a trial and will therefore incur a higher fee (£520 for a summary offence trial). This money is expected to be retained by the Ministry of Justice.
- 15 Fines imposed for TV Licence Fee evasion are enforced in exactly the same manner as are fines for all other criminal offences. Whilst the maximum sentence of the court for offenders convicted of TV licence evasion is a £1000 there are many enforcement options available to try to recover a court fine including as a last resort committal to prison for a maximum of 28 days.
- 16 In recording periods of committal to prison for non payment of court fines HMCTS records only the offence of greatest fine value against each fine defaulter committed prison. In most cases the fine defaulter will have more than one outstanding fine often related to other offences.
- 17 In 2013 there were 32 people committed to prison for fines default where the fine recorded had been imposed for TV Licence Fee evasion⁹. It is probable that in some of these cases the sentence was imposed for the non payment of additional fines that were consolidated with the fine imposed for TV Licence Fee evasion.
- 18 It is not unusual for offenders receiving custodial sentences for an offence to request that other matters be dealt with as part of that sentence, including outstanding and defaulted fines. In these circumstances courts can impose additional days to a sentence, often served concurrently. It is probable that these have, on occasion included offenders who have defaulted or outstanding fines for TV Licence Fee evasion.
- 19 Because it is possible that a period of imprisonment would still be imposed for default on other financial impositions as described at paragraph 17 it is difficult to estimate the number of prison days that would be unused were the courts to cease issuing fines for TV Licence Fee evasion.
- 20 The average period of committal for the 32 Fine defaulters who in 2013/14 were imprisoned for not paying their fine for TV licence evasion was approximately 3 weeks. Based on the average sentenced served of 52% for sentences of less than six months the cost to HM Prison Service of this committal was approximately £22,000. This is based on the average annual cost per prison place of £25k¹⁰.

⁹ This figure has been drawn from administrative IT systems which, as with any large scale recording system, are subject to possible errors with data entry and processing. Source: Justice Statistics Analytical Services - Ministry of Justice

¹⁰ www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

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How the current **criminal enforcement system** could be **improved**; the advantages and disadvantages; the degree to which it would deliver against the Review's key criteria; and, its impact on the tax payer

[Review Questions 6 – 10]

- 21 The government is committed to the ongoing improvement of its services and has introduced provisions through the Criminal Justice and Courts Act 2015 for a new single justice procedure which will come into force on 13th April 2015.
- 22 This new procedure will enable the courts to deal more proportionately with straightforward, uncontested cases currently administered under the written charge and requisition procedure. This will enable further efficiencies to be made by removing the time and geographical constraints of requiring a hearing in open court. We anticipate that costs for HMCTS will be lower than the current estimate at paragraph 9.
- 23 In many TV Licence Fee evasion prosecutions the defendant chooses not to engage with the process and currently a hearing takes place in an empty courtroom with only magistrates, prosecutors and court staff present. The single justice procedure offers an alternative form of proceedings which would enable such cases to be brought before the court at the earliest opportunity and dealt with more efficiently. It will be for prosecutors to identify cases which might be suitable for the single justice procedure.
- 24 To build on improvements made in recent years in fine collection HM Courts & Tribunals Service is embarking on an ambitious programme of reform. Whilst implementing the Criminal Compliance and Enforcement Services Blueprint it has identified a number of areas where fundamental change is necessary in order to further improve services to the public, fine collection rates and value for money. To meet these challenges HM Courts & Tribunals Service are looking to work with commercial providers that will bring the investment and technology needed for HMCTS to achieve its aspirations for its compliance and enforcement services.
- 25 Future automation of many of the current manual administrative processes will decrease the cost of providing fine enforcement and increase the amount of fines that are paid. Automated administrative processes will free up staff time to be more pro-active in pursuing offenders to ensure they comply with their court order.

Out of Court Settlements/Fixed Monetary Penalties; the advantages and disadvantages; the degree to which they would deliver against the Review's key criteria; the impact on the tax payer; and the transitional arrangements that would be required

[Review Questions 11-15]

- 26 TV Licensing currently has the ability to accept the purchase of a TV Licence whenever it identifies a person who has evaded paying the TV Licence Fee. It is the experience of the magistrates' courts that it is rare for the TV Licensing to proceed with a prosecution where a TV Licence is subsequently purchased. The majority of the 13% of prosecutions that are not found guilty will be where a TV License is purchased after proceedings have been initiated.
- 27 There is a number of existing Fixed Penalty Notice (FPN) mechanisms in England and Wales for imposing a sanction for a criminal offence that does

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- not involve a prosecution in court. A Penalty Notice for Disorder (PND) is form of fixed penalty notice currently available to police officers and others who are designated by the Chief Constable to issue Penalty Notices on behalf of the Force, such as Trading Standards Officers. Offences for which a PND can be issued are designated under the Criminal Justice and Police Act 2001. They include offences such as littering or being drunk and disorderly.
- 28 The setting of either a PND or FPN would need to be assessed at a level that would encourage initial payment of the TV licence, or subsequent payment of the Licence Fee when challenged by the TV Licensing for not having a licence as required.
- 29 The issuer of a PND or FPN has no discretion in the level of notice imposed. This is not the case with the existing procedures where magistrates will take into consideration a range of factors, including ability to pay, when setting the level of any fine. These differing approaches could potentially impact on the payment rate even where the Notice is set at the current Court Fine average.
- 30 Fixed Penalty Notice payments are deposited in the Consolidated Fund with £10 from each paid PND used to fund victim services in the same way as the Victim Surcharge described at paragraph 12. The administrative system for recording FPNs is operated by police forces.
- 31 92% of Fixed Penalty Notices for driving offences were paid in 2012¹¹ 51% of all Penalty Notices for Disorder were paid in 2013 with a further 30% registered as fines¹².
- 32 The approach taken where an FPN is not paid differs between schemes. Some schemes provide for the option of prosecution at that stage. Where payment of the PND is not made the issuing authority can decide that the outstanding PND should be registered as a fine. The process for issuing, collecting and then registering unpaid PNDs is well established and understood and builds on existing systems. The registered fine is set at 150% of the value of the original PND.
- 33 Unpaid PNDs that are registered as fines become subject to the same enforcement procedures operated by HMCTS as for court imposed fines. It would therefore not entirely remove the criminal courts from the overall process. Sanctions for not paying a fine include committal to prison for fine default as described above at paragraph 15.
- 34 As with the existing system this process does not address the outstanding TV Licence Fee as such but provides deterrence to non payment and a sanction when non payment occurs.

Civil monetary penalties: the advantages and disadvantages; the degree to which they would deliver against the Review's key criteria; the impact on the tax payer; and the transitional arrangements that would be required.

[Review Questions 21-25]

- 35 Civil monetary penalties are currently levied in decriminalised parking, congestion charging and bus lane contravention.

¹¹ Police powers and procedures fixed penalty notices 2012 to 2013: data tables at

www.gov.uk/government/statistics/tables-for-police-powers-and-procedures-england-and-wales-2012-to-2013

¹² www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-september-2014

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- 36 In the example of Penalty Charge Notices (PCN) for parking infringements the operation of the scheme and collection of payments is done by Local Authorities who retain the proceeds. Where there is non-payment of a PCN the Local Authority can apply to the county court for authorisation to enforce it. The local authority is responsible for arranging the enforcement and the collection of the fine.
- 37 If a PCN remains unpaid the Local Authority can apply to the court through the Traffic Enforcement Centre (TEC) for authorisation to enforce. The Local Authority send data setting out details of the PCNs that they wish to pursue to enforcement. TEC check through the information and authorise the Local Authority to issue an Order for Recovery to the Respondent (Vehicle Owner). This costs the Local Authority £7.00 for each case. The Respondent has 21 days to respond to the Order via a Statutory Declaration/Witness Statement or to pay the outstanding sum to the Local Authority. If the Order for Recovery is not paid or challenged the Local Authority may apply to TEC for authority to issue a warrant of control and pass to enforcement agents for enforcement. The enforcement agent are either employed or contracted by the Local Authority.
- 38 Unlike the enforcement of criminal fines which is funded by HMCTS the enforcement of civil infraction comes with an additional enforcement fee of £7.00 that is added to the debt on the person subject to the enforcement of the civil infraction. Thus the cost of enforcing civil fines is fully recovered by HMCTS.
- 39 If the warrant is unsuccessful the Local Authority can apply to the county court for an attachment of earnings, charging order or third party debt order.

Enforce as a Civil debt: the advantages and disadvantages; the degree to which they would deliver against the Review's key criteria; the impact on the tax payer; and the transitional arrangements that would be required.

[Review Questions 26-30]

- 40 Where the BBC is able to establish the period during which a TV Licence was required but was not purchased it could apply to the county court for its recovery. HMCTS manages over a million such money claims each year and has in place efficient systems for Bulk customers who regularly lodge multiple applications.
- 41 The civil courts operate on a cost recovery model through fees that are levied for its services. Customers who frequently lodge multiple application money claims will register with the County Court Business Centre as a Bulk customer, and pay a fee of £25 for money claims that do not exceed £300.
- 42 Alternately enforcement could be made as a statutory debt. There are different options for enforcement of statutory debts. For example in non payment of council tax and child support a complaint is lodged with a magistrates' court which can issue an award that is enforceable as if it were an order of the county court.
- 43 Where it is dealt with by way of complaint in the magistrates' courts the fee reflects the cost of the administration of the case. For example, the fee for Council tax is currently set at £3.00 and for Child Support it is £40.00.
- 44 The county court fee for applying to enforce such an award is £40.00 plus a fee of £70.00 for executing a warrant. Other enforcement methods are £100. As with the parking debts there is an independent body to deal with appeals against the imposition of the award.