

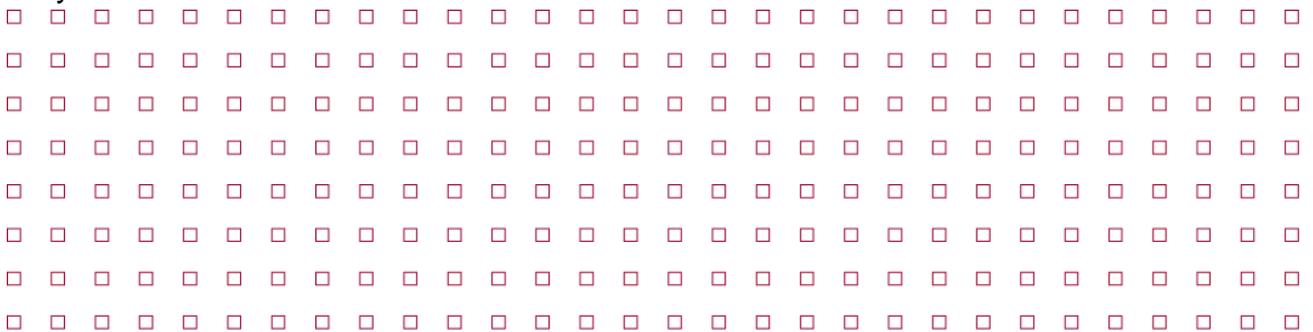


Ministry  
of Justice

# Justice Impact Test

## Guidance

July 2018





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## Introduction

The Ministry of Justice (MoJ) is responsible for providing a more effective, transparent and responsive criminal and civil justice system for victims and the public. New policies, especially those which involve a change in the law, can have a very significant impact on the justice system. These impacts need to be considered, anticipated, and planned for at an early stage to make best use of public funds, and to make sure that service provision within the justice system is not jeopardised.

This guidance sets out the requirements for other government departments who are considering policy proposals that may have an impact on the justice system.

## Frequently Asked Questions

### What is the Justice Impact Test (JIT)?

The Justice Impact Test (JIT) is the MoJ tool that helps policy-makers across government find the best way of achieving their policy aims whilst minimising the impact on the justice system. It assesses policy proposals from other government departments to identify, quantify and cost their impacts on the civil and criminal justice system and covers:

- Legal aid
- Courts, tribunals and the judiciary
- Prosecuting bodies
- Prisons and probation services

The scale of costs resulting from any additional impacts on the justice system, and plans for how they will be funded, will be subject to agreement between MoJ and the policy-owning department.

### Do I need to complete a JIT?

A JIT needs to be completed for all new policy proposals that could potentially have an impact on any aspect of the justice system. Even if the impacts are expected to be minimal, this must be supported by evidence and agreed between MoJ and the policy-owning department via the JIT process.

The key questions that policy-makers should ask themselves are:

- Is it possible that the policy will increase or decrease the volume of cases going through the courts or tribunals? and/or
- Will the policy change the way that cases are dealt with by the justice system?

If the answer to either question is yes, there will be a justice impact however small the change in volume or process might be.

### When do I need to submit the JIT form?

The JIT will form part of your impact assessment process or should be completed as a separate process if you have been advised that an impact assessment is not necessary.

Engagement with MoJ colleagues should be made as early as possible to discuss the proposals. We recommend that the JIT form is submitted as soon as the policy is broadly finalised (i.e. unlikely to substantively change) to avoid duplication of the process should any policy changes take place during the development stage.

### *Cabinet Committee clearance*

Ideally, the JIT should be submitted and cleared **before** you write to Cabinet Committees (e.g. the Home Affairs Committee) for policy clearance. Your write round letter should state that the JIT process has been completed and that arrangements for managing any additional costs have been agreed. MoJ and HM Treasury ministers will take this into consideration during clearance of proposals.

If creating new criminal offences or amending/extending existing ones, please ensure that you have discussed your proposals with the MoJ criminal law policy team - explaining why the new offence or amendment is required and providing justification before submitting your JIT. To find out who you need to speak to, please contact the Justice Impact mailbox.

If you are consulting on your proposals and expect the policy may substantively change, you may wish to submit your JIT form once **the policy is finalised**. We would however expect you to state your intention to complete the JIT in your write round letter seeking Cabinet Committee clearance to publish the consultation.

### **Who can I speak to about quantifying the impacts of my policy?**

We recommend contacting your departmental analysts in the first instance. If you require further assistance, MoJ Analytical Services can provide advice on the key issues to consider and help to quantify and cost the possible impact of your policy proposals.

For further information, or to get in touch with MoJ Analytical Services, please contact the Justice Impact Team at [justiceimpact@justice.gsi.gov.uk](mailto:justiceimpact@justice.gsi.gov.uk). Please allow up to eight weeks for MoJ to respond to any bespoke data requests.

### **What happens after I submit the JIT form?**

The form will be circulated to a range of policy, analytical and operational colleagues from business groups across the MoJ who will consider the potential impact of the proposals on their area of work. The JIT team will consider the responses received from each business group and make a final assessment. We will then advise you of the outcome, including how any anticipated costs to the justice system resulting from the proposals should be managed. The presumption is that the policy-owning department will meet any additional costs to the justice system.

### **Why does my department have to meet costs incurred by MoJ?**

In accordance with HM Treasury's 'Consolidated Budgeting' guidance, the department responsible for a policy initiative is equally responsible for any new burdens that policy places on other government departments. This is commonly known as the 'polluter pays' principle.

### **How long does the JIT process take?**

Eight weeks should be allowed from the date the JIT has been submitted and reviewed to allow sufficient time for MoJ to properly consider the proposals. The JIT team will confirm with you via email as soon as it has been reviewed and circulated.

We recommend engaging with the relevant MoJ officials at the earliest possible stage to discuss your proposals. The Justice Impact team can help you with the correct contacts.

### **What has happened to the Criminal Offences Gateway?**

The Criminal Offences Gateway has been discontinued and the JIT process now operates as a standalone tool.

The Criminal Courts and Criminal Law Policy Unit (CC&CLPU) within MoJ will continue to exercise the department's overall 'custodianship' of the criminal law by scrutinising new and significantly amended criminal offences. This function extends to all criminal offences including those 'owned' by other government departments.

If you are considering creating a new criminal offence or significantly amending an existing one, please refer to CC&CLPU's guidance for advice:

**<https://www.gov.uk/government/publications/making-new-criminal-offences>**

We would encourage you to contact the CC&CLPU here at MoJ before submitting a JIT to avoid any potential delays in the process. At this point we would expect you to provide justification as to why the creation/amendment of a criminal offence is necessary.

## Who to contact for more information

To notify the MoJ of an initiative affecting the justice system, or for further information on the Justice Impact Test, including assistance or advice on assessing and costing impacts, please contact the Justice Impact Team at:

[justiceimpact@justice.gov.uk](mailto:justiceimpact@justice.gov.uk)

## Checklist for completing the Justice Impact Test form

The following questions should be considered ahead of submitting the Justice Impact Test form to MoJ for consideration.

### 1. Your contact details

- Will the contact provided be available over the eight weeks when the JIT is considered?

### 2. General information

- Have you provided all relevant policy detail and background information?

### 3. Criminal Offences, Penalties and Sanctions

If you are creating or amending a criminal offence, have you:

- reviewed GOV.UK guidance on creating new criminal offences; and
- consulted MoJ officials on the proportionality and necessity of the new/amended criminal offence and the associated penalties?<sup>1</sup>
- increase the number of cases investigated or prosecuted by the Crown Prosecution Service (CPS);

### 4. Civil Justice, Courts & Tribunals

Have you considered whether the policy is likely to:

- increase or decrease applications to the courts or tribunals, including judicial reviews;
- transfer cases to a different court or tribunal;
- increase the length or complexity of cases;
- establish a new tribunal jurisdiction or right of appeal;
- require additional judicial recruitment and/or training;
- require new, or amendments to, court or tribunal procedure rules;
- require IT or manual system changes; or
- require documents such as leaflets and court guidance to be reprinted?

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<sup>1</sup> Contact the Criminal Courts and Criminal Law Policy Unit via [justiceimpact@justice.gov.uk](mailto:justiceimpact@justice.gov.uk), if you haven't done so it might delay clearance of the JIT.

**5. Legal Aid**

Have you considered whether the policy is likely to:

- result in additional applications for legal aid;
- increase the number of people eligible for legal aid; or
- increase the likelihood of legal disputes, especially between individuals and public bodies?

**6. Prisons and Offender Management Services**

If the policy is likely to increase the number of offenders committed to custody, or increase the length of custodial sentences, have you:

- contacted MoJ Analytical Services to help quantify and cost the potential impact to prison and probation services?

**7. Volumes**

- Have you provided all available information on potential volumes?
- Have you clearly stated and explained the methodology behind any estimates?

## Glossary

**Alternative Dispute Resolution (ADR):** Ways of resolving disputes between consumers and traders that do not involve going to court. Common forms of ADR are mediation and arbitration.

**Appeal:** The opportunity provided for the member of the public, business or organisation to challenge a decision made by the regulator by appealing to the First-tier Tribunal.

**Applicant/Appellant:** The party who appeals against a decision.

**County Court:** Deals with civil (non-criminal) matters. Unlike criminal cases (in which the state prosecutes an individual) civil court cases arise where an individual or business believes their rights have been infringed.

**Civil Sanction:** The administrative penalty (often monetary) that results from the breach of non-criminal (civil) legislation.

**Criminal Sanction:** The punishment/s that result from being found guilty of a criminal offence. These can range from small fines to long term custodial sentences.

**Crown Court:** Deals with the more serious, triable either way or indictable cases, for example murder, rape and serious fraud/theft. In the Crown Court, whether the defendant is found guilty or not guilty is decided by a jury.

**Criminal Justice System:** The CJS encompasses the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and HM Prison and Probation Services.

**Disposal:** The end result of a trial at court. In this publication the disposals of interest are sentences, but other disposals are possible, for example where there is no finding of guilt and the defendant is acquitted.

**First-tier Tribunal:** An independent judicial body established by Parliament under the Tribunals, Courts, and Enforcement Act 2007. The First-tier Tribunal's main function is to hear appeals against decisions of the Government and comprises of a number of different Chambers:

- General Regulatory Chamber
- Social Entitlement Chamber
- Health, Education and Social Care Chamber
- Tax Chamber
- War Pensions and Armed Forces Compensation Chamber
- Immigration and Asylum Chamber
- Property Chamber

**Fixed Penalties:** Relatively low level fine fixed by legislation which the regulator may impose for a specified minor instance of regulatory non-compliance.

**Her Majesty's Courts & Tribunals Service (HMCTS):** As an executive agency of the Ministry of Justice, HMCTS is the body responsible for the administration of the unified tribunals system.

**Indictable Only Offence:** An offence that is triable only in the Crown Court; all proceedings will start in the magistrates' court but will be sent straight for trial in the Crown Court.

**Judicial Review:** The rights of the courts to look at the administrative processes of statutory authorities.

**Legal Aid:** Public funding provided to individuals to help meet the costs of legal advice, family mediation and representation in a court or tribunal.

**Magistrates' Court:** Magistrates cannot normally order sentences of imprisonment that exceed six months (or 12 months for consecutive sentences). The magistrates' court deals with summary only offences. Some cases are triable-either-way in either magistrates' courts or the Crown Court.

**Offence:** Breach of legislation (criminal or civil)

**Proceeding:** The start of legal action brought against somebody charged with committing a criminal offence.

**Standard of proof:** Level of evidence needed to prove that an offence has been committed.

**Summary Only Offence:** An offence that is triable only in the magistrates' court; all proceedings will start and end in the magistrates' court.

**Triable Either Way Offence:** An offence that is triable in either the magistrates' court or Crown Court. Some proceedings will start and end in the magistrates' court whereas others will start in the magistrates' court but end in the Crown Court. In triable either way cases, defendants can elect to stand trial in the Crown Court or they can be sent for trial in the Crown Court because the offence is deemed serious enough.

**Upper Tribunal:** The Upper Tribunal is a Superior Court of Record. The Upper Tribunal deals with some first instance decisions and appeals resulting from decisions in the First-tier Tribunal.







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