

<b>Title:</b> <b>Impact Assessment on Her Majesty's Courts and Tribunals Service proposals on the enforcement provisions for Crime and Courts Bill</b>  <b>Lead department or agency:</b> Ministry of Justice (MoJ)  <b>Other departments or agencies:</b> Her Majesty's Court & Tribunal Service (HMCTS)	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b>
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
<b>Contact for enquiries:</b> Anna Charles 0203 334 6334	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The problem under consideration is the incomplete and non-compliant payment of financial impositions owed to Her Majesty's Courts and Tribunals Service (HMCTS) and other agencies. This undermines criminal punishment and imposes compliance and enforcement costs upon HMCTS and ultimately the tax payer. This is unjust.

Government intervention is necessary to ensure that the punishment of offenders is robust, that offenders face the costs that they currently impose on Government and to facilitate the achievement of HMCTS's longer-term ambition to improve compliance and the efficiency of service delivery.

**What are the policy objectives and the intended effects?**

The objectives of the legislative changes are twofold. First, to clarify the law around the enforcement functions of the courts' fines officers. It is the ambition of HMCTS to continue to move to a compliance rather than enforcement regime, as set out in the HMCTS Criminal Compliance and Enforcement Blueprint; legislation is needed to remove the ambiguity in current legislation to reduce the risk of successful legal challenge if at any point HMCTS were to contract out the role. Second, the legislative changes will enable the imposition and recovery of a charge imposed on offenders for the costs of collecting or pursuing financial impositions. This would mean that costs incurred can be recovered rather than being subsidised by the Government / taxpayer as is currently the case.

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

Option 1) Do nothing; and  
 Option 2) Clarify the law around enforcement functions of courts' fines officers and enable the imposition of a charge to reflect the cost of recovery.

Under the "do nothing" option offenders will continue to impose costs on HMCTS and avoid punishment. HMCTS could face a risk of legal challenge if it were to contract out its fine enforcement role.

Option 2 is the preferred option as it will: 1) introduce collection charges that will be proportionate to the fine and cost of collection, which will be recoverable from the offender in the same way that fines and prosecutors costs currently are. This is to reduce the net cost of fine enforcement and incentivise compliance; and 2) clarify the law around enforcement functions of courts' fines officers, in order to reduce the legal risks associated with contracting out.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 5 years after implementation

**What is the basis for this review?** PIR. **If applicable, set sunset clause date:**

<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes
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**SELECT SIGNATORY Sign-off**

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:  Date: \_\_\_\_\_

# Summary: Analysis and Evidence

# Policy Option 1

Clarify the law around enforcement functions of courts' fines officers and enable the imposition of a charge to reflect the cost of recovery

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

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

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

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

HMCTS would incur project costs as a result of the development and implementation of the preferred option. HMCTS would also incur on-going costs to administer additional charges.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	£0m	£4m	£35m

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

HMCTS would benefit from a reduction in the net cost of compliance and enforcement activities, by imposing a charge on offenders to recover compliance and enforcement costs.

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

Society could benefit from greater public confidence in HMCTS fine enforcement and from a potential improvement in the punishment of offenders.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

It is assumed that:

- the charge income is a net benefit to society (we do not count the costs to offenders);
- the charge does not affect payment rates (owing to unavailable evidence);
- the volume of accounts opened and compliance rates are flat in the future from 2011/12 levels; and
- the charge is implemented in July 2013.

The risks are:

- the appraisal is inaccurate owing to the potential for a change in account volumes from 2011/12 levels;
- some offenders may not be willing or able to pay the charge and the cost recovery may be partial.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			01/07/2013		
Which organisation(s) will enforce the policy?			HMCTS		
What is the annual change in enforcement cost (£m)?			£0m		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			<b>Costs:</b> 100	<b>Benefits:</b> 100	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	6-8
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

## Evidence Base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	
2	
3	
4	

# Evidence Base (for summary sheets)

## Introduction

This Impact Assessment examines the costs and benefits of legislative change with regard to fine and financial imposition compliance and enforcement activities currently undertaken by Her Majesty's Courts and Tribunals Service (HMCTS).

Fines account for a significant amount of the criminal courts' business. In the year to September 2011, around 65% of all offenders sentenced were sentenced by way of a fine. It is by far the largest disposal route from the criminal courts. In this period there were a total 861,705 offenders sentenced to a fine, 859,502 of which were sentenced in the magistrates' courts and 2,203 in the Crown Courts.<sup>1</sup>

However, ensuring compliance with financial impositions is not always easy. Some offenders lead chaotic lives; with regularly changing addresses. Some offenders do not use identity materials and take active steps to avoid detection, and information provided to HMCTS on the defaulter can be incomplete and become out of date. In too many cases the fine is never recovered. There is currently around £600m in outstanding fines and related awards which constitutes the combined amount over a number of years that has not been collected, or written off.

In the financial year of 2010-11, £413m of fines and related awards were imposed in the criminal courts and £282m were collected.<sup>2</sup> The costs to Government of collecting financial penalties can be disproportionate to the fine recovered; HMCTS currently employs around 400 Civilian Enforcement Officers (CEOs) and around 1,700 enforcement administration officers full or part time enforcing and collecting criminal fines.

## Rationale for intervention

The rationale for intervention is to ensure that the Government delivers robust punishment of offenders and achieves greater efficiency in delivering this service.

A large proportion of offenders do not currently pay their criminal fines to HMCTS in a full or timely manner. This undermines criminal punishment and it imposes compliance and enforcement costs upon HMCTS and ultimately the tax payer. This is unjust. Government intervention is necessary to increase efficiency through incentivisation of compliance and to ensure that punishment is robust and that offenders face the costs that they currently impose through partial or non payment.

## Policy Objective

The objectives of the project are:

- Reduce the net cost to HMCTS of collecting and pursuing fines;
- Encourage early/voluntary compliance; and
- Clarify the law around the role of the fines officers.

## Description of options considered

- **Option 1: "do nothing": continue to deliver the Criminal Compliance & Enforcement Blueprint 'as is'; and**
- **Option 2: clarify the law around enforcement functions of courts' fines officers and enable the imposition of a charge to reflect the cost of recovery.**

<sup>1</sup> MoJ "Criminal Justice Statistics, Quarterly Update to September 2011". Data is available at: <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics>.

<sup>2</sup> Includes fines imposed in the magistrates and crown courts, costs, compensation, victims surcharge and fixed penalties and penalty notices for disorder that are registered as fines for enforcement. Collections in year do not necessarily relate to impositions in a year as they can be for impositions in previous years.

## **Option 1: “do nothing”**

The “do-nothing” option (the baseline) is that HMCTS will continue to move to a compliance rather than enforcement regime, as set out in the HMCTS Criminal Compliance and Enforcement Blueprint. However, under this regime, HMCTS will continue to face the full cost of ensuring compliance with court imposed fines, and could face a risk of successful legal challenge were it to contract out its fine enforcement role.

## **Option 2: clarify the law and enable the imposition of a charge**

Our first provision seeks to directly tackle disproportionate costs by creating the ability for HMCTS or an acting agent to recover its costs of enforcement and collection. The provision would introduce a charge on defaulters for non payment which would be collected and enforced in the same way as a fine is. The proposed charge would recover some or all of the administrative costs of enforcement and collection and be met by the offender, much like prosecutor’s costs apply now, although collection costs would be applied post sentencing.

Our objective is to move to a compliance-end agenda, where offenders are encouraged to pay early and/or comply with payment plans, rather than using the more expensive enforcement end of compliance. The collection costs will serve to encourage compliance whilst not being a penalty.

Our second provision seeks to clarify the law around contracting out functions of the fines officer under Sch 5 Courts Act 2003.

Current legislation does not directly prevent HMCTS from contracting out fine officer functions but it does create ambiguity as to the purpose of Sch 5 and its relation to s2(5) Courts Act 2003 which prevents the Lord Chancellor from contracting out judicial functions. It could be argued that some of the functions undertaken by the fines officers are quasi judicial (i.e. ordering deductions from benefits or earnings, issuing distress warrants and/or varying payments in favour of debtor), in which case contracting out the fines officers would be in direct contradiction of s2(5). It could also be argued that as fines officers are not judges it would follow that their decisions are not judicial decisions and any discretionary powers they may have are not judicial discretions. Given this lack of clarity and the risk of legal challenge if it were to contract out its fine officer functions, legislative clarity is required.

## **Project costs and benefits**

### **Scope**

The analysis below provides an appraisal of the impacts of the charge. Clarification of the law around enforcement functions of courts’ fines officers is not appraised as having direct costs or benefits, because contracting out is not assumed to occur within the baseline or as an outcome of Option 2.

### **Baseline**

In order to appraise the costs and benefits of the preferred option, it is necessary to establish the baseline against which outcomes can be appraised.

In the period from 1<sup>st</sup> April 2011 to 31<sup>st</sup> January 2012, around 1.07m accounts were opened.<sup>3</sup> The real value of impositions has been broadly flat between financial years 2006/07 and 2010/11, and so in the absence of other data, it is assumed that the volume of accounts opened per year will remain flat. Therefore, inflating 10 months of data up to 12 months of data, we arrive at an estimated baseline of around 1.3 million accounts opened per year.

### **Benefits**

The imposition of a charge would result in the generation of revenue, which would reduce the net cost of enforcement and collection for HMCTS.

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<sup>3</sup> These accounts cover fines imposed in the magistrates and crown courts, costs, compensation, victims surcharge and fixed penalties and penalty notices for disorder that are registered as fines for enforcement

At this stage of policy development the charges and charging structures have not been determined, and the actual charges would depend on future cost structures of compliance and enforcement activities. An indicative estimate of the charge revenue per annum is given below, based on an illustrative charging mechanism as follows:

- If an account is non-compliant it is charged £15;
- accounts can be split into accounts that are compliant (24%) and accounts that are non-compliant (76%);
- it is estimated that non-compliant accounts will have a payment rate of 30%;
- It is assumed that there are around 1.3m accounts imposed per year; and
- Therefore per annum revenue is an illustrative  $£15 \times 76\% \times 30\% \times 1.3\text{m} = \text{£4m}$

The proportion of accounts that are considered to be complaint is based on the proportion of accounts opened in April 2011 that did not have some type of enforcement action by January 2012. Although this is an indicative proportion based on one month of imposition data (owing to a lack of data pre- April 2011), accounts opened in the months following April 2011 have shown similar trends in the proportion receiving enforcement action in the months following imposition.<sup>4</sup>

The per annum revenue estimated above has been used to estimate the illustrative present value of the benefits of this policy, as given below in Table 1. Real benefits have been discounted using a discount rate of 3.5%<sup>5</sup>, and present values have been rounded to the nearest £1m (£5m for the total).

*Table 1: present values of benefits per financial year*

Year	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Total charge revenue (present value)	£0m	£3m	£4m	£4m	£4m	£4m
Year	2018/19	2019/20	2020/21	2021/22	2022/23	Total
Total charge revenue (present value)	£3m	£3m	£3m	£3m	£3m	£35m

There could also be benefits from increased timeliness of payment, which could lead to public confidence gains.

## Costs

There would be one-off costs associated with HMCTS designing and implementing the charge.

There would be on-going administrative costs for HMCTS associated with running the charging mechanism, however these costs could be met by the charge and could be negligible in the wider context of existing administrative functions for collecting fines and other financial impositions.

## Risks and assumptions

The main assumptions are:

- charge income is a net benefit to society (we do not count the costs to offenders of complying with criminal justice);
- the charge does not increase or decrease payment rates (owing to unavailable evidence on the effect of a charge on offenders' willingness and ability to pay fines);

<sup>4</sup> Enforcement action includes actions such as issuing a further steps notice, attachment to benefits or issuing a distress warrant.

<sup>5</sup> Using guidance from HM Treasury's "Green Book".

- the charge does not affect the judiciary's propensity to sentence by way of a fine;
- accounts opened remain flat from 2011/12 levels;
- the charge is implemented in July 2013; and
- the charge is based on an indicative charging condition and level of charge.

The main risks are:

- the charge as modelled may not be reflective of future costs of compliance and enforcement activity and so cost recovery may only be partial; and
- the estimated benefits could be inaccurate as follows:
  - they could be delayed or not forthcoming if legislative changes do not reach Royal Assent;
  - they could be overestimated if the charge were to encourage earlier payment of fines;
  - they could be underestimated if the charge were to incentivise increased payment of financial impositions; and
  - they could be underestimated given the potential for other policies to increase caseload, such as the proposal to extend the victim surcharge to all sentences (including those offenders who only get a community sentence or a custodial sentence at present).

### **Summary and preferred option with description of implementation**

The preferred option is to introduce a series of charges on offenders to enable the recovery of costs currently faced by HMCTS of enforcing criminal financial penalties. The charge would cover some or all of the costs of collection and be collected in the same way as a fine or prosecutor's costs. The costs will not be applied retrospectively.

Commencement of the legislative provisions will occur 2 months following Royal Assent with regards to the provision on fines officer. Commencement of the collection costs provision will be on a date appointed by the Lord Chancellor.

Implementation of both provisions is likely to be in the latter half of 2013 to fit with the future strategy for fines collection.

There will be regular review periods to assess the level of the charge to ensure they remain in line with the expected decrease in collection costs. The first post-implementation review would take place after a full 12 months of operation. A full review of the costs regime will occur 5-7 years following implementation of the charge.



## **SPECIFIC IMPACT TESTS**

### **Statutory Equality Duties**

Initial screening for the Equality Impact Assessment (EIA) has been carried out for both staff and customers. No significant and adverse impacts have been identified as a result of these proposed provisions.

### **Justice System Impact Assessment**

The main body of this impact assessment focuses on justice system impacts.

### **Sustainable Development, Rural Proofing, Human Rights, Health & Wellbeing, Wider Environmental Issues, Greenhouse Gas - impact test**

The initial screening of these impact tests indicates that there would be no significant, adverse impacts from this proposal as set out in this impact assessment.

## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:**

To evaluate the revenue generated following the implementation of the charge.

**Review objective:**

The PIR will assess whether policy objectives were met, such as:

- Reduction of net costs of collection/enforcement to HMCTS;
- Transfer of the cost of collecting (or attempting to recover) criminal financial penalties to the offender; and
- Improved early/voluntary compliance rates.

**Review approach and rationale:**

The approach to the PIR will be to review performance and management information with that of the HMCTS baseline data collected prior to when changes were implemented.

**Baseline:**

24% of accounts imposed in April 2011 had no enforcement action by January 2012.

**Success criteria:**

Generation of revenue to cover some or all of the costs of enforcement.

**Monitoring information arrangements:**

The current Libra "Green on Black" system allows HMCTS to measure the proportion of accounts that receive enforcement action following imposition.

**Reasons for not planning a review:**

N/A

## Annex 2: Specific impact tests overview

<i>Type of Impact</i>	<i>Response</i>
<b>Impact Assessment (Full)</b>	A full impact assessment is deemed necessary because: <ul style="list-style-type: none"> <li>- There will be a political and media interest;</li> <li>- The proposal is to change primary legislation;</li> <li>- There will be a transfer of costs from HMCTS to an offender;</li> </ul> and <ul style="list-style-type: none"> <li>- There will be an impact on MoJ costs and benefits as well as the Government more widely.</li> </ul>
<b>Competition Assessment</b>	We do not consider these proposals to be pro or anti-competitive. There are no direct impacts on suppliers or providers. However an assessment will be made as a part of the wider enforcement project.
<b>Small Firms Impact Test</b>	These provisions have no direct impact on small firms but an assessment will likely be needed as a part of the wider enforcement project.
<b>Carbon Assessment</b>	We do not anticipate any significant impact on emissions of greenhouse gases.
<b>Other Environmental Impacts</b>	We do not anticipate any significant impact on the environment.
<b>Health Impact Assessment</b>	We do not anticipate any significant impact on human health. These proposals will have no impact on the lifestyles of any major subgroup of the population or on the demands for health and social care services.
<b>Human Rights Impact</b>	These proposals are compliant with the Human Rights Act.
<b>Rural Proofing Assessment</b>	The impacts of these proposals will be no different in rural areas.
<b>Sustainable Development Assessment</b>	The proposed reforms are consistent with the principles of sustainable development.
<b>Equality Impact Assessment</b>	An Equality Impact Assessment has been produced in support of primary legislative changes.
<b>Privacy Impact Assessment</b>	These proposals have no direct impacts on privacy but as a part of the wider enforcement project a privacy impact assessment will be required in due course.