

## Prisons and Courts Bill

### Equalities Statement: Creating more efficient case allocation and case management processes

#### Policy change summary

1. The Government proposes a number of legislative measures which will remove unnecessary appearances by the defendant and other parties in court and allow information to be provided to and by the court in writing (preferably online) and for pre-trial, case management decisions (including allocation and sending decisions) to be made outside of the courtroom in the absence of the parties.

#### *Improving allocation and sending*

2. **Enabling defendants to indicate a plea in writing (preferably online) in all cases.**<sup>1</sup> Where the defendant engages by indicating a desire to plead in writing, the court will be able to triage the case depending on the plea indication and the nature of the alleged offence, and undertake any necessary case management before the matter is listed for a hearing. For example, if the defendant indicates a desire to plead guilty to a summary offence, the matter will be listed for a conviction and sentencing hearing in the magistrates' court and the court, where necessary, will direct for the preparation of any pre-sentence reports in advance without the need for a hearing solely for the purpose of ordering the pre-sentence report.
3. **Enabling allocation to be dealt with in writing (preferably online) in all triable either-way cases, without the need for a court hearing.** Where the defendant chooses to indicate a plea online, this measure will mean that the continued interactions between the court and the parties with regard to plea before venue and mode of trial will also be able to take place in writing, and the court will undertake allocation decisions outside the physical court room without a hearing.

If the defendant does not participate online, their case will proceed with plea before venue and mode of trial in the usual manner at a court hearing.

Similar changes are being made in youth cases in light of the separate law on allocation that applies to them. Therefore in all cases allocation may be dealt with in writing (preferably online), without the need for a court hearing where it is in the interests of justice to do so.

4. **Enabling the magistrates' courts to deal with allocation of an either-way offence in the defendant's absence (i.e. where the defendant has not engaged in writing and fails to attend court).** Where a defendant has not engaged online and then also subsequently fails to attend their plea before venue hearing in a triable either-way case, the court will be able to deem the defendant to have indicated a not guilty plea and then make its allocation decision in the defendant's absence if it is satisfied that the defendant has been properly served with the proceedings. This means that if the magistrates consider their sentencing powers to be inadequate, then they send the case to the Crown Court for trial. Otherwise, where suitable the magistrates can allocate the case to summary trial and make any directions for the preparation of this trial. In these circumstances, the defendant is to retain his or her

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<sup>1</sup> Defendants can (if they wish) already indicate a plea in writing in respect of non-imprisonable, summary offences under the Single Justice Procedure and in respect of summary offences commenced by summons or written charge under the section 12 MCA 1980 procedure. This is to be extended to all offences.

right to elect for a jury trial at any point before the start of the summary trial in which case the offence would be sent to the Crown Court for trial.

5. **Removing the requirement for defendants charged with offences that must be tried in the Crown Court to make a first appearance in the magistrates' court,** and enabling the magistrates' court to send these indictable-only cases to the Crown Court without a hearing. Where a bail hearing is required, this would be done by video hearing (where the grant of bail is in dispute) or by telephone hearing (where there is a dispute as to the conditions of bail to be attached).

#### *Safeguards*

6. Detailed information will be provided as to how the written procedures above work and the defendant will be informed of the option to attend court in person. The differences between the various processes and the consequence of each will be clearly and comprehensibly explained so as to ensure defendants make informed decisions about whether to engage online or not.
7. For example, the consequences of indicating a guilty plea or not guilty plea under each procedure will be explained. This explanation will include details of how indicating a guilty plea has significant consequences, ie:
  - i. the case will be listed for a hearing where the court may convict and sentence the defendant for the offence;
  - ii. the sentence imposed in respect of that conviction may include other orders, such as a compensation order, the victim's surcharge, a costs order or civil behaviour orders relevant to the offence charged; and
  - iii. the conviction may be disclosable in criminal record and vetting and barring checks.
8. Defendants will be informed of their right to seek independent legal advice and representation and advice on how they can seek such legal support and find out whether it is free or not.
9. A defendant will be asked to confirm the plea they have indicated on-line when they later appear before the court for their sentencing hearing or trial. At this point the court will be able assess whether the defendant has fully understood the charges and implications of their plea. In all cases, the court will continue to have powers to set aside any decision where they think consent is invalid or open to doubt.

#### *Young defendants*

10. Approximately 3% of defendants proceeded against at the magistrates court are below the age of 18. These measures will apply to children and young people in the criminal courts, and as such we have given consideration to whether the measures would be discriminatory to them. When a youth or an adult defendant makes their first appearance in court after they have indicated a plea on the papers, the court will make sure that they have understood the charges and the implications of the plea before proceeding further. This process will be especially important in respect of young defendants. In light of their age and immaturity, alongside what we know about risk factors that can increase the likelihood of offending behaviour, there is a particular emphasis on communication with and participation of youths in court proceedings in the youth justice system. Courts will, unless it is unreasonable to do so, make holders of parental responsibility aware of pre-trial matters being dealt with

on the papers. Furthermore such matters, where they would currently be proceedings of the youth court, will remain so.

## **Equality duties**

11. The Public Sector Equality Duty comprises three limbs, set out in section 149(1) of the Equality Act 2010, whereby a public authority must, in the exercise of its functions, have due regard to the need to:
- i. Eliminate discrimination (both direct and indirect), harassment, victimisation and any other conduct that is prohibited by the Act;
  - ii. Advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not. This includes removing or minimising disadvantages suffered by people due to their protected characteristic, taking steps to meet the needs of people who share a particular protected characteristic, and encouraging participation in public life.
  - iii. Foster good relations between persons sharing a relevant PC and persons who do not. This includes tackling prejudice and promoting understanding.
12. The relevant protected characteristics are race, sex, disability, sexual orientation, religion or belief, age, gender reassignment, pregnancy and maternity. The protected characteristic of marriage and civil partnership is also relevant to the first limb of the duty.

## **Equality considerations**

### Direct Discrimination

13. The proposals are not directly discriminatory within the meaning of the Equality Act as they apply equally to all court users: we do not consider that the proposals would result in people being treated less favourably because of the protected characteristic. Safeguards will also apply.

### Indirect Discrimination

14. We do not believe that the allocation and sending measures will result in any indirect discrimination as we do not believe they are likely to cause any particular disadvantage to people with protected characteristics. However, as is the case more generally across England and Wales, there is over-representation of certain people in the criminal justice system with protected characteristics, as shown below, which will affect some of the proposed measures.
15. We recognise that the digitisation and automation of HMCTS systems could indirectly affect users according to protected characteristics. For example such changes have the potential to have adverse effects on the basis of age, disability, and ethnicity (linked to socio-economic disadvantage) to the extent that some groups are less internet or digitally enabled than others. We will be mitigating these effects by ensuring that there is reasonable provision of assisted digital support for those who may struggle or would not otherwise be able to use the service.
16. Overall, we do not believe that the proposal will result in any indirect discrimination against users of the justice system since it is not considered likely to result in any particular disadvantage for people with protected characteristics. The approach is designed to make the process easier for all court users by offering other options for

engaging with the court to significantly improve user experience and reduce user costs. Furthermore, we consider the proposals are a proportionate means of achieving the legitimate aim of supporting citizens to obtain justice more swiftly whilst reducing the costs of the courts and tribunals to taxpayers.

#### Discrimination arising from disability and duty to make reasonable adjustments

17. Many participants with disabilities may find these measures have a positive impact as they will reduce the need to travel to court unnecessarily. The numbers of disabled people using the internet is increasing; statistics suggested that in 2016, 25.0% of disabled adults had never used the internet, down from 27.4% in 2015.<sup>2</sup>
18. Assisted Digital provision (as set out in the recent consultation proposal<sup>3</sup>) will address the digital access needs of individuals who are unable to engage with online services, ensuring they will not be denied access to justice, and will mitigate any risk of discrimination arising from digitising our services. We expect a range of support channels to be available, from web chat or telephone assistance to more intensive face to face assistance. This would also be available to professional users acting on behalf of their client. Access to paper channels will also be maintained in some services for those users that require them. In cases which qualify for assistance from the duty solicitor scheme, we will ensure that defendants continue to have the same access as they would do at court. There will be a number of ways in which duty solicitors will be made available, such as at the police station, by telephone, webchat, or through video-conference access to the court duty solicitor.

#### Harassment and victimisation

19. We do not consider there to be a risk of harassment or victimisation as a result of these measures.

#### Advancing equality of opportunity

20. Consideration has also been given to the objective of advancing equality of opportunity and we have concluded that it is unlikely to be of particular relevance to this proposal.

#### Fostering good relations

21. Consideration has also been given to the objective of fostering good relations between persons who share a relevant protected characteristic and persons who do not and we have concluded that it is unlikely to be of particular relevance to this proposal.

#### Summary

22. Our assessment of equality impacts is that these measures will not result in any direct or indirect discrimination of courts and tribunal users with protected characteristics, but could be used by some groups with protected characteristics more than the general population. In fact, users are likely to benefit from these proposals as they will reduce the need to travel to court unnecessarily.

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<sup>2</sup> <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2016>

<sup>3</sup> 'Transforming our Justice System: assisted digital strategy, online conviction and statutory fixed fines', <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/>

This publication was archived in June 2017.

## Annex 1: Evidence

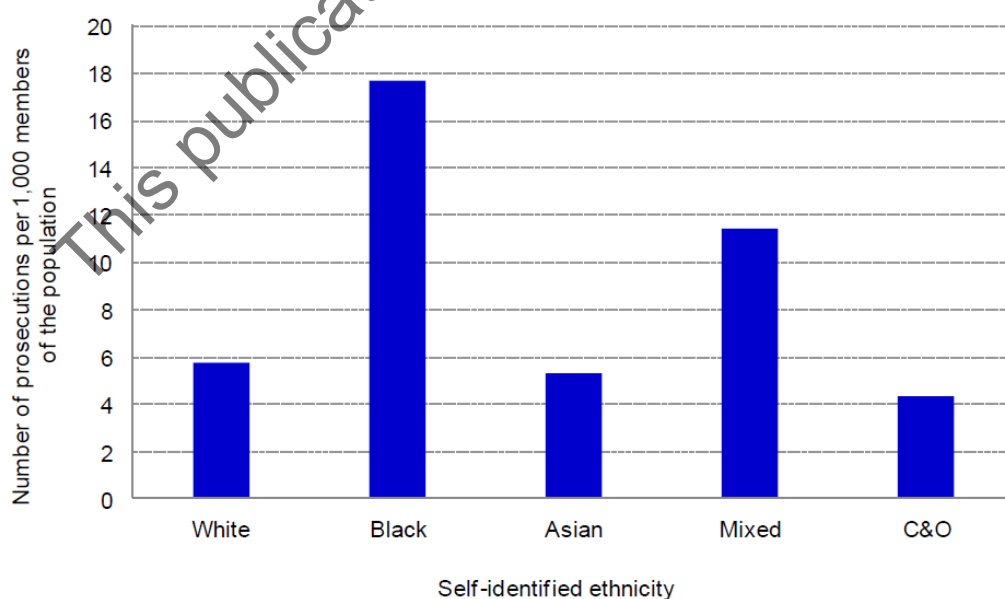
The following statistics give an indication of the over-representation of certain groups in the criminal justice system, namely men and those from a BAME background. Age data for adult defendants in the criminal justice system was not available.

**Table A.01: Overview of Women and the CJS: Proportion of individuals in the CJS by gender compared to general population**

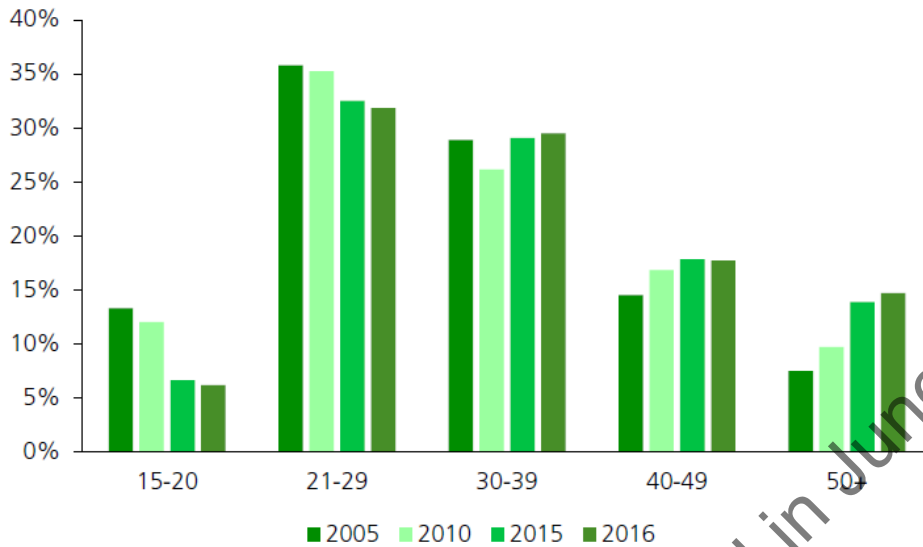
Data	Time period	Female	Male	Total
Population aged 10 and over	Mid-2013	51%	49%	49,994,815
Arrests	2012/13	15%	85%	1,072,068
Out of Court Disposals				
Penalty Notices for Disorder	2013	23%	77%	84,268
Cautions	2013	23%	77%	180,286
Court Proceedings	2013	25%	75%	1,347,278
Convictions	2013	25%	75%	1,112,148
Sentenced to Immediate custody	2013	8%	92%	92,295
First time offenders	2013	27%	73%	164,588
Offenders with previous cautions or convictions	2013	14%	86%	545,976
Prison population	30 June 2014	5%	95%	85,509
Under supervision in the community	31 Dec 2013	15%	85%	110,950

*Statistics on Women and the Criminal Justice System 2013, Ministry of Justice, November 2015*

**Figure 5.02: Rates per 1,000<sup>62</sup> members of the population of prosecutions for indictable offences at magistrates' courts, by ethnicity, in England and Wales, 2014**



**Prison population proportion by age, 2005-2016<sup>13</sup>**



In the magistrates' court in 2015, there were 501,010 summary (non-motoring) offences tried. Of this, 294,443 (58%) were offences committed by males. In the same period there were 382,933 triable either way offences heard at both the magistrates' court and the Crown Court. Again the majority of these cases (85%) involved males – 327,452. At the Crown Court, 16,848 cases involved individuals who were being tried for an indictable offence; 15,227 (90%) of these cases concerned male defendants.

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