

Title: Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 – Response to consultation IA No: MOJ 172 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)	
	Date: 5 July 2013	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Secondary legislation	
Contact for enquiries: Legalaidreformmoj@justice.gsi.gov.uk		
Summary: Intervention and Options	RPC Opinion: RPC Opinion Status	

Cost of Preferred (or more likely) Option							
Total Net Present Value		Business Net Present Value		Net cost to business per year (EANCB on 2009 prices)		In scope of One-In, Measure qualifies as One-Out?	
£m	NQ	£m	NQ	£m	NQ	No	NA

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

When Part 1 of LASPO came into force on 1 April 2013, it repealed and replaced the previous legal aid schemes established under the Access to Justice Act 1999. Implementation of the new criminal legal aid scheme presented an opportunity to consider improvements to Crown Court means testing (CCMT). Operationally, CCMT has not performed as well as expected. Steps were required to address these concerns so that the delivery of savings and wider benefits under CCMT could be optimised. Government intervention was required as the proposed policy revisions identified as a result of the consultation exercise, needed to be reflected in the secondary legislation implementing the new CCMT scheme under LASPO.

What are the policy objectives and the intended effects?

Under CCMT, although all defendants are granted a representation order, a means assessment determines whether the individual should be asked to pay a contribution towards their defence costs from their income or capital assets. In implementing the new CCMT scheme under LASPO, we wish to implement changes in policy that will improve performance thereby maximising revenue from the new scheme.

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

Implement the new CCMT scheme under LASPO through:

Option 0: Adopting the existing policy and operational framework.

Option 1: Adopting policy and operational changes to: i) amend arrangements in relation to the sanctions for a defendant's failure to comply with the evidential requirements under CCMT; (ii) revise the way in which the triggers for a re-assessment of a defendant's liability to an income contribution order may operate, and (iii) improve the collection and enforcement of contribution orders, including implementation of motor vehicle order regulations.

Option 1 is our preferred option, as it fits with the policy objectives and intended effects outlined above.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Year: 2016/17 or 2017/18					
Does implementation go beyond minimum EU requirements?				Yes / No / N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium 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 SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 1

Description:

Price Base Year 11/12	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

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	NQ	NQ	NQ

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

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

Legal aid defendants: defendants that do not comply with their obligations to provide evidence and make payments under an Income Contribution Order (ICO) and a Capital Contribution Order (CCO) will make higher contributions (than at present) and may pay the costs of enforcing the orders.

Legal Aid Agency (LAA) administrative costs: from increased enforcement powers. We have assumed these will only occur if the benefits outweigh the cost of enforcing an order.

Legal aid providers: costs relating to explaining to clients the implications of non-compliance and supporting clients in the collection of appropriate evidence.

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			

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

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

Legal aid fund: increased income would be generated by increasing the amount and the recovery of money owed to the LAA by defendants in the Crown Court who are required to contribute to their legal aid costs.

Enforcement firm: might receive additional income from enforcing more orders. The income from this is assumed to offset the cost.

Society: more defendants are likely to contribute, as required, towards their legal aid defence costs delivering better value for money for the taxpayer.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

- LAA resource costs are assumed to increase only if the benefit of additional enforcement resource outweighs the cost of enforcement action.
- Any enforcement firm costs are assumed to be met by increased fee income.

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base (for summary sheets) – Notes

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No	Legislation or publication
1	Crown Court means testing Consultation Paper (CP27/08) – published 6/11/2008 (the supporting Impact Assessment and Equality Impact Assessment were appended to the Consultation Paper)
2	Crown Court means testing Response to Consultation (CP(R)[06/09]) – published 8/6/2009 Crown Court means testing Interim Impact Assessment – published 8/6/2009 (the Interim Impact Assessment incorporated the Equality Impact Assessment) Crown Court means testing Questions and Answers – published 8/6/2009
3	Crown Court means testing: Draft Regulations Consultation Paper (CP 11/09) – published 14/7/2009 Crown Court means testing: Draft Regulations Response to Consultation (CP(R) [06/09]) – published 28/10/2009 Crown Court means testing Supplementary Impact Assessment – published 28/10/2009 (including the Interim Equality Impact assessment)
4	The Criminal Defence Service (Contribution Orders) Regulations 2009/No.3328
5	Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (CP 21/2012 – published 30/10/2012. Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Equality Impact Assessment – published 30/10/2012 Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 - Initial Impact Assessment/IA No. MOJ 172 – published 30/10/2012
6	Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 - Response to Consultation CP(R) 7/2013 - published on 5 March 2013 Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 - Interim Impact Assessment/IA No. MOJ 172 - published on 5 March 2013
7	The Criminal Legal Aid (Contribution Orders) Regulations 2013/No.483

Evidence Base (for summary sheets)

1. Introduction

Background

- 1.1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) received Royal Assent on 1 May 2012. When Part 1 of LASPO came into force on 1 April 2013, it repealed and replaced the existing legal aid scheme established under the Access to Justice Act 1999. Part 1 of LASPO contains provisions governing the scope of the new criminal legal aid scheme as well as the financial eligibility criteria determining an individual's access to services under that scheme.
- 1.2 CCMT was phased in across England and Wales between 11 January and 28 June 2010. Following the implementation in October 2006 of means testing for defendants appearing before the magistrates' court, the extension of the means testing principle to the Crown Court had been a logical next step.
- 1.3 Means testing at the magistrates' court operates as an 'in/out' scheme based solely on an assessment of income; if the defendant is financially eligible and passes the 'Interests of Justice' (merits) test, he/she will be granted legal aid. This contrasts with the application process governing the grant of criminal legal aid for a defendant appearing before the Crown Court; provided the defendant submits a completed application form, he/she will be granted legal aid (the 'Interests of Justice' test does not apply in deciding legal aid eligibility for the Crown Court defendant). However, under the CCMT scheme, a financial assessment of the defendant's means is employed to determine whether or not that individual should be asked to pay a contribution towards their publicly funded defence costs from their income or capital assets.¹
- 1.4 If the defendant is liable to pay a contribution from income, he/she will be issued with an Income Contribution Order (ICO) comprising 6 monthly payments,² the first of which falls due within 28 days of the defendant being committed/sent to the Crown Court. If the defendant is convicted at the end of the trial, they may be liable to pay any outstanding defence costs from their capital assets through a Capital Contribution Order (CCO). In the event of an acquittal, the defendant will be refunded any income contributions.
- 1.5 For appeal cases heard at the Crown Court following conviction and/or sentence at the magistrates' court, eligibility to criminal legal aid funding will be subject to the 'Interests of Justice' test. The principles of CCMT also apply to appeal cases at the Crown Court with unsuccessful appellants potentially liable to a fixed rate contribution of £250 or £500 dependent on the outcome of the assessment of their means.

¹ Under a Service Level Agreement, the Legal Aid Agency delegates day to day responsibility for assessment of the great majority of legal aid applications under CCMT to Her Majesty's Courts and Tribunals Service. In addition, it contracts out all collection and enforcement activity under the scheme to Rossendaes Ltd.

² The ICO comprises 6 monthly payments. However, as an incentive to timely compliance, the defendant is exempt from the 6th payment if they have met the first 5 payments in accordance with the terms of the ICO. If the defendant so chooses, they may settle the ICO in a single lump sum payment.

Problem under consideration

- 1.6 During FYs 2010/11 and 2011/12, the amount of recognised income generated from CCMT was £28,000 and £1.9 million, respectively.³ However, CCMT net cash collection in FY 2011/12 reached £5.8 million.⁴ This reflects accounting requirements agreed between the Legal Aid Agency (LAA)⁵ and National Audit Office (NAO) which mean that revenue can only actually be recognised as 'income' once the defendant has been convicted and an assessment of final defence costs has been carried out.
- 1.7 Performance in relation to collection and enforcement activity of ICOs is too low; in FY 2011/12 less than 20% of the total value of ICOs issued in that year were collected. In addition, activity to assess and collect capital contributions has only started to gather momentum since the start of FY 2012/13. The realisation of income from CCOs may take many years, particularly when a charging order is made against property.
- 1.8 The Ministry of Justice (MoJ) accepts that the LAA has little influence over some of the factors impacting on delivery of CCMT savings. Nonetheless, based on the current performance of the scheme, the MoJ has identified a series of proposed measures which it could adopt to help improve CCMT performance, including encouraging greater compliance with evidential requirements, and improving collection and enforcement rates.
- 1.9 Whilst we would anticipate that our proposed measures can help to boost revenue from CCMT over coming years, we are unable to estimate with confidence what level of steady state savings can be realised under the scheme, nor when they will be realised in full.

Policy Objectives

- 1.10 For the CCMT scheme to work effectively, the scheme must provide for:
 - i. An accurate assessment of a defendant's means so that we accurately identify those defendants who can afford to pay a contribution towards their defence costs, and set the level of the contribution order to reflect this;
 - ii. Effective collection and enforcement of any liability owed by the defendant.

Without these, future benefits realisation under the scheme will continue to be compromised.

- 1.11 The policy proposals (set out in summary below) seek to facilitate this process in order to promote attainment of the policy objective so that defendants who are able to pay towards their legally aided defence costs are doing so.
- 1.12 The consultation paper, MoJ response and MoJ addendum to the response, contain full details of the policy changes and additions, including details of where these depart from existing CCMT policy. This Final Impact Assessment should be read alongside those papers as well as the Initial and Interim Impact Assessments and Equality Impact Assessment.
- 1.13 None of the changes set out in this Final Impact Assessment impact on the financial eligibility thresholds governing CCMT, nor do the changes impact on the nature or type of evidence required in support of the criminal legal aid application.
- 1.14 In terms of benefits realisation under CCMT, we also wish to emphasise that whilst revenue collected under the scheme is a significant component, we have always recognised that CCMT implementation may generate wider benefits for legal aid and the criminal justice system as a whole (for example, CCMT may over time impact on the proportion of defendants electing for Crown Court trial, given that legally aided representation at the Crown Court is no longer offered

³ See the Legal Services Commission's Annual Reports and Accounts for FYs 2010/11 and 2011/12 at: http://www.legalservices.gov.uk/docs/about_us_main/LSC_AnnualReport_2011-12.pdf and http://www.legalservices.gov.uk/docs/archive/LSC_AnnualReport_2010-11.pdf

⁴ Ibid

⁵ When LASPO was commenced on 1 April 2013, the LAA replaced the Legal Services Commission.

Economic rationale for intervention

- 1.15 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.16 The rationale for intervention in this case relates to both efficiency and fairness grounds.
- 1.17 There would be gains in productive efficiency if the LAA could recover increased contributions through CCMT with the same resource input. This could arise through both improving incentives for defendants to make contributions and by furthering the tools available to the LAA to help recover liabilities owed.

Policy Proposals

- 1.18 The MoJ took forward the following key changes in implementing the CCMT scheme under LASPO:
- 1.19 (i) Amending the arrangements governing the sanctions that may be applied in circumstances where a defendant fails to comply with the evidential requirements under CCMT:
- If a defendant does not comply with a request for further information or evidence in relation to capital assets within 14 days (or such other period as may be agreed by the defendant and the LAA), the LAA will be entitled to conclude that the individual has sufficient capital resources to pay any outstanding balance of their defence costs following conviction at the conclusion of the case. However, this sanction can only be triggered if the LAA has reasonable grounds to believe that the defendant has capital assets to cover this amount and the defendant has failed to provide a reasonable excuse for not submitting the necessary information or evidence. In addition, this sanction will be lifted as soon as the defendant complies with this request as the overriding aim of our policy is only ever to ask the defendant to pay a CCO which properly and accurately reflects the value of their capital assets.
- 1.20 (ii) Revising the way in which the triggers for a re-assessment of a defendant's liability to an ICO may operate. We wish to ensure that the CCMT scheme under LASPO continues to provide the flexibility to recognise that liability under and to an ICO may change, so that a defendant only ever pays a contribution under an ICO for an amount which accurately reflects their true income status. We envisage that the new scheme will provide for the following situations:

Information or evidence is provided by the defendant following the submission of their legal aid application which enables the LAA to complete the means assessment process and this subsequently requires a revision of the ICO which has already been issued. In this case, when a defendant's liability under an ICO or an Income Evidence Sanction (IES) is re-assessed and liability to an ICO remains, the ICO is fixed at the amount that accurately reflects what the individual should pay. If the outcome of the re-assessment demonstrates that an original decision that the defendant should not be liable to an ICO was incorrect and in fact an ICO should have been made, it will be possible to recoup from the defendant the amount the defendant would have been liable to pay under an ICO had an ICO been made.

- A defendant's financial circumstances change after their liability to an ICO has been established. If a defendant's liability decreases as a result of the change in financial circumstances, provided

New information comes to light which requires the LAA to revisit the original decision reached in relation to a defendant's liability to an ICO. In this case, when a defendant's liability under or to an ICO is re-assessed and liability to an ICO remains, the ICO is fixed at the amount that accurately reflects what the individual should have been asked to pay had all the relevant information and evidence been provided at the point of original assessment. Equally, if the outcome of the re-assessment demonstrates that an original decision that the defendant should not be liable to an ICO was incorrect and in fact an ICO should have been made originally, it will be possible to recoup from the defendant the amount the defendant would have been liable to pay under an ICO had an ICO been made.

It appears that there has been an administrative error or mistake in undertaking the original financial assessment of the defendant. In this case, when a defendant's liability under or to an ICO is re-assessed and liability to an ICO remains, the ICO is fixed at the amount that accurately reflects what the individual should have been asked to pay had all the relevant information and evidence been provided at the point of original assessment. If the outcome of the re-assessment demonstrates that an original decision that the defendant should not be liable to an ICO was incorrect and in fact an ICO should have been made originally, it will be possible to recoup from the defendant the amount the defendant would have been liable to pay under an ICO had an ICO been made.

- If the re-assessment concludes that the defendant should have correctly been asked to pay a higher contribution under their ICO, we will collect any shortfall through an additional payment beyond the existing 6 monthly payments under an ICO (in cases where the defendant has settled their liability to an ICO in a single lump sum payment, the liability to an additional payment will also apply). We acknowledge that in some cases where the additional payment is due, it may be for a relatively small amount. However, in some cases, the additional sum may be much larger and give rise to concerns from the defendant as to their ability to settle this sum in a single payment. If this arises, the LAA can agree with the defendant a variation of the payment arrangements.
- In all cases, the reassessment may take place up until the date on which the final assessment of defence costs concludes and any liability to a CCO is established. This means that the reassessment may take place after the date of the conclusion of proceedings. However, a defendant will only ever be asked to pay the amount which would have fallen due on or before the date of the conclusion of the proceedings. Regulations make clear that the date of the conclusion of the proceedings is the date on which a convicted defendant's sentencing hearing concludes - this is when the defendant stops incurring costs and the costs of representation can therefore be assessed with a view to establishing liability to a CCO.

1.21 (iii) Measures to clarify and improve collection and enforcement of contribution orders:

- Implementation of motor vehicle order (MVO) regulations, giving the LAA the power to apply to the court for a clamping order as a means of enforcing a defendant's liability arising from either an ICO and/or CCO. If the individual is convicted and their liability remains outstanding, the LAA may apply to the court for an order to sell the motor vehicle. The power to make a clamping order may be exercised both pre and post-conviction; the power to make an order for sale may only be exercised once 28 days have elapsed from the date of the defendant's conviction or once 28 days have elapsed from the date of the clamping order, whichever is the later. The LAA will only consider making an application for a clamping order once the defendant has had the opportunity to pay voluntarily and the LAA has already made attempts to encourage compliance through written correspondence and contact by telephone or SMS.

- Schedule 2 to LASPO already provides for statutory safeguards which must be included in the MVO scheme. A court may only make an order if it is satisfied that the defendant's failure to pay the relevant amount was due to wilful refusal or culpable neglect on their part and that the value of the vehicle if sold would amount to over half the estimated recoverable amount;⁶ the clamping order must not be made unless the motor vehicle is owned by the individual who is liable to pay the overdue amount;⁷ and the court may not make an order in relation to a vehicle used by a disabled driver.⁸
 - In addition to the safeguards contained at Schedule 2, we have provided that the defendant will have an opportunity to make written representations to the court as to the adverse impact an order might have. If the defendant wishes to argue that the vehicle should not be clamped, for example, because the vehicle is required for employment or work, to take a dependent family member for a medical appointment or to take dependent children to school, any written representations must be supported by documentary evidence. This should include details of alternative travel arrangements, including as appropriate, public transport, home to school or school travel arrangements provided by a local authority, as well as transport provided by the Patient Transport Service. The court will only make an order if it is satisfied that the order is appropriate in all the circumstances. In making its decision, the court will take into account any matters it considers relevant but, in particular, whether the individual or any other person would be likely to be prejudiced by the making of the MVO and the practicability of alternative means of transport.
 - Separate to the implementation of MVO Regulations, following the conclusion of proceedings⁹, the LAA has the flexibility to enforce the amount under the ICO which fell due for payment (or would have fallen due for payment) on or before the date of the conclusion of proceedings and is unpaid. The enforcement of such an amount may take place alongside collection and enforcement of a CCO.
- 1.22 As referred to above (see paragraph 1.12), the full detail of the policy changes and additions,, including details of any deviation from existing CCMT policy, are reflected in the MoJ consultation paper, MoJ response paper and MoJ addendum to the response paper which this Final Impact Assessment accompanies.
- 1.23 The most significant departure from the previous CCMT scheme is the introduction of an additional payment in certain circumstances following the re-assessment of a defendant's liability under an ICO. Where a defendant's liability under an ICO is reassessed in light of new information or evidence, or as a result of an administrative error, the overriding objective is to ensure that the defendant is asked to pay an amount under an ICO which accurately and properly reflects their true income status. In some cases, the reassessment will result in the defendant being found liable to pay a higher contribution from income. In this case, the MoJ now allows the LAA to collect any shortfall between the amount a defendant has paid or was liable to pay under an ICO and the amount they should properly have been asked to pay from the outset through an additional single payment from income. This necessitated a variation to previous practice that an ICO should only comprise 6 monthly payments.
- 1.24 The changes only apply to England and Wales. The LAA is not responsible for legal aid in Scotland or Northern Ireland.

Affected key stakeholder groups

- 1.25 The proposals will affect the following groups:
- Legal aid clients.

⁶ As provided for in paragraph 5 of Schedule 2 to LASPO.

⁷ Operationally, ownership can be demonstrated if the defendant has acknowledged ownership on the legal aid application form and this information is subsequently verified with DVLA. An information gateway is being established for this purpose through the *Legal Aid (Information about Financial Resources)(Amendment) Regulations 2013* which were laid in draft before Parliament on 17 May 2013.

⁸ As provided for in paragraph 7 of Schedule 2 to LASPO.

⁹ If the defendant is acquitted, the date of the conclusion of proceedings is the date of the acquittal. If the defendant is convicted, the date of the conclusion of proceedings is the date on which the subsequent sentencing hearing concludes – this is when the defendant stops incurring costs and the costs of representation can therefore be assessed with a view to establishing liability to a CCO.

- LAA.
 - Legal Services providers.
 - Enforcement firms.
 - Her Majesty's Courts and Tribunals Service.
 - Driver and Vehicle Licensing Agency (DVLA).
- 1.26 We consider the impacts on each of these groups from introducing the changes to the CCMT process compared to the base case and this is covered in further detail in the costs and benefits section below.

2. Costs & Benefits

- 2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society might be from implementing the options considered. The costs and benefits of each option are compared to the 'do nothing' option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the proposals impact differently on particular groups of society or changes in equity and fairness.
- 2.2 This Impact Assessment considers the impacts on these groups under the proposals for implementation of the updated CCMT process.

Option 0: Base case (do nothing)

- 2.3 Under the 'base case' option, the new CCMT scheme under LASPO would maintain the existing policy and operational processes under the existing scheme. If this option was pursued, then under the new CCMT scheme:
- Some clients may continue to not comply with their ICOs or CCOs, or the requirement to provide information to support an accurate assessment of their liability to such an order.
 - The LAA would not be able to take fully effective enforcement action against those who do not comply with their required income or capital contributions.
- 2.4 As the 'base case' option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Implementation of the changes to the CCMT scheme under LASPO

Description

- 2.5 The main proposals under this Option are summarised in the 'Policy proposals' section (paragraphs 1.18 to 1.24).

Costs of Option 1

Costs to legal aid clients

Some legal aid clients may pay an increased amount in future if as a result of a re-assessment of their liability they are asked to make an additional payment under the ICO. However, a defendant will only be asked to pay an amount which accurately and properly reflects their true income status. Equally, if the outcome of the re-assessment demonstrates that an original decision that the defendant should not be liable to an ICO was incorrect and in fact an ICO should have been made originally, it will be possible to recoup from the defendant the amount the defendant would have been liable to pay under an ICO had an ICO been made.

- 2.6 There will for the most part be no costs to defendants who comply fully with their obligations to provide information to the LAA and keep up their payments if any liability is owed.
- 2.7 There may be an impact on legal aid clients in future if the defendant does not comply with the terms of their contribution order and enforcement action is taken using motor vehicle clamping orders. In some cases, this may lead to the vehicle being sold although the defendant would have the opportunity to settle any outstanding liability prior to this (under our scheme, an order for sale can only be made once 28 days have elapsed from the date of the defendant's conviction or once 28 days have elapsed from the date of the clamping order, whichever is the later). If the defendant wishes to make written representations to the court in respect of an application for either a clamping order or an order for sale, these must be supported by relevant documentary evidence. Responsibility for preparing any written representations will fall to the defendant, supported by family members or friends, as required.
- 2.8 If enforcement action is taken, the defendant may be liable for any associated enforcement fees and charges under the MVO Regulations, in addition to the liability owed to the LAA. Introducing motor vehicle clamping orders for non compliance with payments is anticipated to have a real impact on recovery rates. It is assumed that as this change will affect only those defendants with sufficient means to pay a contribution, a greater number of these defendants are likely to own a motor vehicle than the majority of Crown Court defendants.
- 2.9 Failure by the defendant to comply with a supplementary request for information or evidence in relation to their capital assets will allow the LAA to assume in certain circumstances that the defendant has sufficient capital resources to pay 100% of their outstanding defence costs. This may mean that the defendant would pay more than under the previous arrangements. However, this is only ever intended as a prompt to compliance. Therefore, once the information or evidence is provided, the LAA will re-assess how much the defendant can afford to pay towards their final defence costs from their capital assets.
- 2.10 Further to the impacts outlined above, some defendants might be incentivised to provide the information or evidence requested, or keep up with any required contributions in order to avoid the potential sanctions that could be levied.
- 2.11 Allowing the LAA the option in all cases to pursue a convicted defendant for any amount under the ICO which fell due for payment (or would have fallen due for payment) on or before the date of the conclusion of proceedings and is unpaid may improve the recovery rate. If any of the monthly payments under an ICO have not yet fallen due for payment by the date of conviction, it is likely that a further one or possibly two monthly payments may do so between this date and the date of the conclusion of the proceedings.
- 2.12 In general, any costs to defendants through increased payments mirror the benefits to the LAA with the exception of any enforcement fees. Enforcement fees are dependent upon the behaviour of the defendant in response to policy proposals. This is unknown and, therefore, unquantifiable. See the 'Benefits to Legal Aid Fund' section (below) for analysis of the costs to defendants.

Costs to the LAA – Administration Costs

- 2.13 The LAA may incur some adjustment costs in adapting to the new CCMT scheme under LASPO, such as familiarisation with the new powers.
- 2.14 Ongoing costs (in terms of staff time and court fees) might also be seen if additional resource is required to operate the scheme to its full capacity in future. It is assumed that such additional costs would be incurred only if the benefit of any additional resource input would be outweighed by the cost in terms of improved operation of the scheme.
- 2.15 Under the MVO scheme, in cases where an application is made to the court for either a clamping order or an order for sale, if an application is unsuccessful the cost of the court fee will be borne by the LAA.

- 2.16 In cases where the clamping order has been granted or an order for sale has been granted but the vehicle has not yet been sold, if there is a subsequent review or re-assessment of the individual's liability under their contribution order leading to the extinguishing of that liability, the LAA must release the vehicle and bear all charges and enforcement costs.
- 2.17 If review or reassessment of the individual's liability under their contribution order leads to a reduction in that liability, the LAA may choose to release the vehicle or apply to the court for a new MVO.
- 2.18 If the LAA releases the vehicle, or the court declines to make a new MVO and the vehicle is released, all charges and enforcement costs will be borne by the LAA.
- 2.19 If the LAA applies for a new MVO, any charges arising between the date of the reassessment and the granting of the new MVO will fall to the LAA.

Costs to legal services providers

- 2.20 There may be some costs to legal services providers as they will have to explain to legal aid clients the additional implications of non-compliance with the evidential requirements as well as the consequences of non-compliance with the terms of the ICO or CCO, especially in relation to enforcement options which may be exercised by the LAA. There may also be an additional cost in supporting clients in the collection of appropriate evidence.
- 2.21 While some respondents to the consultation exercise on these proposals agreed with our initial suggestion that costs to legal services providers would be negligible, all respondents representing the legal profession emphasised the extra work that clients might expect providers to do to assist them in completing forms and providing evidence; for example, where a client was in custody that would require a prison visit. They considered that significant unremunerated work would result.
- 2.22 Given the concerns that in the cases affected by these proposals there may be an increase in client care demands, at least in the short term, we intend to monitor impacts on providers following implementation of these proposals (see paragraph 3.2). We are doing what we can to minimise any potential impact by ensuring that the relevant information published to support the scheme (especially on the LAA website and in written correspondence with providers) reflects any changes, as appropriate.
- 2.23 Legal services providers are not expected to support clients in making written representations to the court in respect of either an application for a clamping order or an order for sale

Costs to Her Majesty's Courts and Tribunals Service

- 2.24 There may be an increase in the volume of applications to the court for the seizure of motor vehicles. However, this is likely to be offset by the court fee.

Costs to enforcement firms

- 2.25 Enforcement firms may be required to undertake additional enforcement work in future. Any costs associated with this would be met by increased fee income.

Costs to DVLA

- 2.26 If an individual has declared on their legal aid application form that they are the owner of a motor vehicle, or if there is good reason for the LAA to believe that this is the case, and if that individual subsequently defaults on payments under a contribution order, DVLA may be asked to verify whether the details of the individual and their vehicle match DVLA records for the registered keeper of the vehicle.
- 2.27 In the short term, any costs associated with the verification process will be met by DVLA. However, subject to volumes, this arrangement may be reviewed.

Costs to society and wider economic costs

2.28 There are no anticipated wider costs to society.

Benefits of Option 1

Benefits to legal aid clients

2.29 No benefits to legal aid clients have been identified.

Benefits to Legal Aid Fund

2.30 As explained in the 'Costs to legal aid clients' section, the changes should improve the efficacy of the new CCMT scheme under LASPO by directly providing the LAA with an enhanced mechanism to enforce provision of information or liability payments, as well as by influencing the behaviour of those defendants who currently do not comply with their obligations through the incentives the sanctions provide. Overall these should raise the rate of recovery of monies owed by defendants under either an ICO and/or CCO.

2.31 For further detail of the potential mechanisms by which increased contributions may be made in future, please refer to paragraphs 1.18 to 1.24.

2.32 It is not possible at this stage to estimate precisely the net impact of the policy changes on the level of CCMT income. This is linked to the complex nature of the variable factors that have a potential impact on performance under the scheme. For example, the proportion of defendants liable to pay a contribution towards their legally aided defence costs, the average value of a contribution order, the acquittal rate at the Crown Court and the duration of trial proceedings may each have an impact on potential revenue collection. However, our current assessment is that the resource costs associated with implementation of the changes is negligible and likely to be outweighed by the financial benefits.

2.33 Any benefit generated by the proposals in terms of increased contributions would be ongoing, with any additional savings rising each year relative to the 2011/12 base case.

Benefits to legal services providers

2.34 There are no anticipated benefits to legal services providers.

Benefits to Her Majesty's Courts and Tribunals Service

2.35 There are no anticipated benefits to courts.

Benefits to DVLA

2.36 There are no anticipated benefits to DVLA.

Benefits to enforcement firms

2.37 Enforcement firms may see increased fee income in future in line with any additional enforcement work required.

Benefits to society and wider economic costs

2.38 Any improvement in the effectiveness of the operation of the new CCMT scheme under LASPO would contribute towards the objective of ensuring that those defendants who are able to

Option 1: Summary of key assumptions

2.39 The following key assumptions apply to Option 1:

- If defendants are unable to make contributions towards their Crown Court legal aid, they will provide evidence to demonstrate this and avoid any sanctions being levied.
- LAA resource costs are assumed to increase only if the benefit of additional enforcement outweighs the costs.
- It has been assumed that the underlying volume of Crown Court cases will not be affected and neither will the uptake of legal aid. There is a possibility that both might fall at the margin as a result of clients paying more for their legal aid in accordance with their ability to pay.

3. Enforcement, Sanction and Monitoring

- 3.1 The new process detailed in this Impact Assessment was implemented on 1 April 2013, with the exception of motor vehicle order regulations which we aim to implement in July 2013.
- 3.2 We will monitor impacts arising from implementation of the new scheme on the key stakeholder groups identified in this Impact Assessment. To do this, we will rely on existing governance structures to support performance management of the criminal legal aid scheme; this will be particularly relevant in identifying impacts on legal aid clients, the LAA and HMCTS. We will also monitor feedback on the operation of the new scheme from legal services providers. This will primarily be through the LAA's monthly meetings with professional representative bodies at the criminal contract consultative group. In addition to this, each legal service provider is assigned a contract manager at the LAA with whom they can raise matters of operational concern.

4 One In One Out

4.1 The proposals in this Impact Assessment do not constitute regulation as they relate to the procurement of legal aid services. Any increase in payments from claimants to the legal aid fund would constitute transfer payments.