

## Prisons and Courts Bill

### Equality Statement: Unifying the structure and leadership of and management of cases between the Crown Court and magistrates courts

#### Policy change summary

1. The Crown Court and magistrates' courts have always operated under markedly different jurisdictions and processes, despite the fact that both courts are responsible for trying defendants accused of breaking the law. The existing structure of the criminal court system in England and Wales is inefficient, thereby resulting in wasted judicial and court resources. This inefficiency wastes taxpayers' money. Government intervention is necessary because the fundamental structure of the criminal court system is governed by legislation, so any reforms must be made by Act of Parliament.
2. The objectives of the proposed legislative package are to: (i) give magistrates' courts more flexibility in the way cases and magistrates are assigned so they can better manage their caseloads; (ii) allow greater jurisdictional flexibility in the allocation of cases between the magistrates' courts and the Crown Court so that the senior judiciary have proper oversight of criminal case allocations, cases can be moved between courts more easily, and courts can ensure that judicial and financial resources are appropriately matched according to the type of case.
3. These objectives would be achieved by abolishing local justice areas, restructuring the magistrates' courts' leadership and management arrangements and amending criminal procedures so that cases can be sent back to the magistrates' court from the Crown Court if necessary.

#### Equality duties

4. 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<sup>1</sup> 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 protected characteristic and persons who do not. This includes tackling prejudice and promoting understanding.
5. We have considered the impact that the above options may have on the statutory obligations under the Equality Act 2010. Paying "due regard" needs to be considered against the nine protected characteristics under the Equality Act.

---

<sup>1</sup> The protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

## Equality considerations

### Direct discrimination

6. Our assessment is that these provisions are not directly discriminatory within the meaning of the Equality Act as they apply equally to all people. We do not consider that the provisions would result in people being treated less favourably because of their protected characteristics.

### Indirect Discrimination

7. These measures do not indirectly discriminate as we do not believe these changes 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 with protected characteristics in the criminal justice system as a whole. We do not expect the changes to have a negative impact on any particular group, but even if this was to be the case, we believe the measure is a proportionate means of achieving our legitimate aim of ensuring more cost efficient running of the criminal courts and efficient use of taxpayers' money.

### *Amending allocation arrangements - sending cases back to the magistrates' court from the Crown Court*

8. In cases where the defendant has been charged with a triable either-way offence (i.e, offences which could be heard in either the Crown Court or magistrates' court depending on the seriousness of the case or the decision of the defendant), it is proposed that the Crown Court should be able to return such cases to a magistrates' court in certain circumstances. The policy intention is that this transfer back to the magistrates' court lower court would happen when it becomes clear from subsequent evidence that the offence is less serious than originally thought. In 2015, there were 82,098 triable either way offences heard at the Crown Court<sup>2</sup> (involving individuals rather than other groups such as corporate entities). 88% of these cases involved males, with 11% involving females indicating that the policy will affect more males should cases move from the Crown Court to the magistrates' court.
9. In terms of ethnicity, it is to be expected that those with a white ethnicity make up the greatest proportion of defendants at the Crown court given that this group makes up 87% of the population.<sup>3</sup> However those with a black ethnicity make up around 8.3% of defendants whose triable either way offence is heard at the Crown Court which, when compared to the 3%<sup>4</sup> of the overall population with a black ethnicity, appears

---

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524330/prosecutions-convictions-and-remands-data-tool.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524330/prosecutions-convictions-and-remands-data-tool.xlsx)

<sup>3</sup>Information from 2011 Census:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/keystatisticsandquickstatisticsforlocalauthoritiesintheunitedkingdom/2013-10-11#ethnicity-and-country-of-birth>

<sup>4</sup> Information from 2011 Census:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/keystatisticsandquickstatisticsforlocalauthoritiesintheunitedkingdom/2013-10-11#ethnicity-and-country-of-birth>

disproportionately high and so would be affected in greater number by the proposed changes – but the effect of this will not cause any disadvantage to this group.

10. The same is also true of people with Asian ethnicity (including Chinese); 7.8% of defendants have their triable either way case heard at the Crown Court but this group only make up 7% of the overall population<sup>5</sup> so it could be suggested that there is a slight over representation of this group within the criminal justice system and that they would also be affected to a greater degree by the change proposed but again, we do not expect the change to result in any disadvantage.
11. In respect of age, over 21 year olds make up the largest group of triable either way cases heard at the Crown Court (89%) so it is expected that this age group would be affected by the proposed change. However under-18s could potentially be affected by the change as well; in 2015 807<sup>6</sup> under-18s had their triable either way offence heard at the Crown Court so there is a possibility that some cases involving this age group could be sent back to the youth court.

#### *Restructuring the magistrates' courts' leadership and management arrangements*

12. If local justice areas are to be abolished, then there will be a requirement to amend current bench structures and arrangements for bench chairmen and deputy chairmen. In a reformed system the organisation of magistrates should be a matter for the judiciary in the same way that other judges are allocated to particular court locations. This would give the judiciary stronger leadership and oversight of magistrates' court cases. The magistrates' courts would be brought within the management and leadership of the Crown Court to address concerns that the senior judiciary do not have sufficient oversight of cases in the magistrates' courts. It would entail a single leadership judge having overall responsibility for the work of magistrates in that Crown Court circuit area.
13. There are currently 17,552 magistrates across England and Wales.<sup>7</sup> There are more female magistrates; 53% of the total number of magistrates are women and 11% of magistrates have declared themselves from a BAME background.
14. The age demographic of magistrates remains skewed with substantially more magistrates over the age of 50 – over 80% of magistrates. This is in contrast to under 30 year olds who make up less than 1% of magistrates.
15. With regards to disability, the proportion of magistrates who have declared themselves as having a disability stands at around 4%. This compares with statistics

---

<sup>5</sup> Information from 2011 Census:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/keystatisticsandquickstatisticsforlocalauthoritiesintheunitedkingdom/2013-10-11#ethnicity-and-country-of-birth>

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524330/prosecutions-convictions-and-remands-data-tool.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524330/prosecutions-convictions-and-remands-data-tool.xlsx)

<sup>7</sup> Judicial Diversity Statistics, July 2016 - <https://www.judiciary.gov.uk/publications/judicial-statistics-2016/>

from the Department for Work and Pensions which suggest that the prevalence of disability among the population in Great Britain is 16% of the population of adults of working age<sup>8</sup>.

16. We do not expect these changes to have a particular impact on magistrates with protected characteristics.

#### *Abolishing local justice areas*

17. The borders between the existing 104 local justice areas mean that court users cannot always attend the magistrates' court closest to them because it sits within another local justice area. These boundaries make it difficult to transfer defendants' cases to a court in a different local justice area, which may have more listing time available. This means that cases are not always heard at the earliest opportunity or at the most convenient court location.
18. As local justice areas are being abolished, the barriers which could have increased both the time and distance travelled for victims and witnesses will no longer exist. As a result, we expect individuals across all the protected characteristics to benefit equally.

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

19. We do not believe that the proposals will adversely affect an individual with a disability. One of the effects of abolishing Local Justice Areas (LJA's) is that magistrates and court users will be able to attend courts which are closer to where they live, because allocation of cases will not be restricted by the LJA boundaries. It would also provide courts with more flexibility to list cases in courts which have appropriate facilities for court users who are disabled or have other specific needs. This would be a benefit to all court users. Therefore our assessment is that the measures to abolish local justice areas do not indirectly discriminate against people with a disability.

#### Harassment and victimisation

20. We do not consider there to be a risk of harassment or victimisation as a result of the proposals that will be implemented.

#### Advancing equality of opportunity

21. Consideration has been given to how the proposal impacts on the duty to advance equality of opportunity. As stated above, one of the effects of abolishing LJAs is that magistrates and court users will be able to attend courts which are closer to where they live, because allocation of cases will not be restricted by the LJA boundaries.

#### Fostering good relations

---

<sup>8</sup> Disability Facts and Figures , published by the Department for Work and Pensions, 16<sup>th</sup> January 2014

22. Consideration has been given to how the proposal impacts on the duty to advance the fostering of good relations between people who have a protected characteristic and those who do not; however it is unlikely to be of any relevance to the proposed measures.

This publication was archived in June 2017.