

<b>Title:</b> Legal Aid Means Test Review – Criminal  <b>IA No:</b> MoJ021/2022 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> Legal Aid Agency (LAA)	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 25/05/2023			
	<b>Stage:</b> Response			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
	<b>Contact for enquiries:</b> legalaidmeanstestreview@justice.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A	

Cost of Preferred (or more likely) Option (in 2023 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
N/A	N/A	N/A	Not a Regulatory Provision

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

Entitlement to legal aid is means tested to focus taxpayer resources on those that need it most. The income and capital thresholds for legal aid eligibility have not been updated for more than a decade, meaning the proportion of the population eligible has fallen year on year. Moreover, the legal aid means test needs updating in a number of areas in order to better align with other government departments, for example, to reflect the position on Universal Credit as more individuals transition onto it from legacy benefits. Following the Means Test Review, the government intends to implement new changes to the legal aid means test that will increase access to legal aid in England and Wales, so helping to ensure access to justice. Government intervention is required because the legal aid means test is governed by secondary legislation.

**What are the policy objectives of the action or intervention and the intended effects?**

The policy objective is to ensure that the means test is fair, efficient, and sustainable. This will help to ensure that individuals are able to obtain legal services when they need them, securing access to justice. This can be measured by the proportion of the population that is eligible for legal aid, which we expect to increase under our policies.

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

The following options are assessed in this Impact Assessment:

- Option 0/do nothing: Continue with the existing test, including the thresholds and continuing to passport all recipients of Universal Credit (UC), as it is further rolled out.
- Option 1: Increase the income thresholds for criminal legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of UC, except for those areas of advice and assistance and advocacy assistance which remain means tested.

Any change to the means test requires regulation. We considered alternative non-legislative options, but none met our policy aims. Due to the transition of the benefits regime from legacy benefits to UC, Option 1 is evaluated against two baselines. Baseline 1 is one where all benefit recipients are still on their legacy benefit while Baseline 2 is where all benefit recipients have been transitioned to UC. The following option summary sheets therefore assess the impact of Option 1 against both of the respective baselines. In reality, the current legal aid eligibility of the England and Wales population will lie somewhere between these two baselines.

**Will the policy be reviewed? Yes** If applicable, set review date: 3-5 years after implementation

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro N/A	Small N/A	Medium N/A	Large N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: 0		Non-traded: 0	

***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

# Option 1 Baseline 1

**Description:** Increase the income thresholds for legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of Universal Credit (UC). Compared against a baseline where all benefit recipients are still on legacy benefits (Baseline 1).

## FULL ECONOMIC ASSESSMENT

Price Base Year 2023	PV Base Year 2023	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	2	2	14-23	N/A

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

- Under this baseline, there will be an additional steady state annual cost to the Legal Aid Fund of £6m-£12m.
- There will also be additional costs to clients of around £6m-£9m per annum (pa), although these will not fully arise for many years.
- There will be administration costs to the Legal Aid Agency (LAA) of around £0.4m per year from processing around 13,000-20,000 additional magistrates' courts and 200 extra Crown Court claims per year. There will also be one-off costs to the LAA from the necessary IT, training, and guidance changes estimated at around £3m.
- Criminal legal Aid providers will also need to do further administrative work for the additional volumes and complexity (in collecting evidence and processing applications), along with other administrative burdens. This is estimated to cost around £1m pa.

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

Criminal legal aid providers who also conduct private criminal work along with providers that exclusively undertake private criminal work may experience a reduction in the amount of private work available to them, as some of their client base will now be eligible for legal aid when they were previously ineligible.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate			13-20	N/A

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

- Recipients of legal aid who currently contribute towards their Crown Court legal costs will be likely to pay no or smaller contributions under this option, providing them with an annual benefit of £3m-£4m. Clients in the magistrates' court and the Crown Court will benefit if they previously paid their legal costs privately (as they were ineligible for legal aid), but under this option have now become eligible for contributory or non-contributory legal aid.
- Criminal legal aid providers will get a significant amount of additional work as a result of the changes, providing them with an estimated £10m-£15m of additional annual income.

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

Under the current means test, some clients may represent themselves, decide not to pursue legal proceedings or seek out other methods of representation (such as pro bono support) due to being ineligible for legal aid. Under the new policies, if they become eligible, they will benefit from having legal representation.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	N/A
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The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.

- Adults in the population who become eligible for legal aid will take it up at a similar rate to those who of a similar age, sex and who have the highest capital/income of those already eligible.
- Any changes that arise as a result of increased access to legal aid are assumed to amount to transfers between the LAA and legal aid providers and, as such, a net present value (NPV) is not included.
- Cost estimates have been uplifted to account for the increases to solicitor and barrister fees agreed as part of the Criminal Legal Aid Independent Review.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	

# Summary: Analysis & Evidence

# Option 1 Baseline 2

2

**Description:** Increase the income thresholds for legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of Universal Credit (UC). Compared against a baseline where all legacy benefit recipients have been transitioned to UC (Baseline 2).

## FULL ECONOMIC ASSESSMENT

Price Base Year 2023	PV Base Year 2023	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	2	2	9-19	N/A

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

- Under this baseline, there will be an additional steady state annual cost to the Legal Aid fund of -£1m to £5m.
- There will be additional costs to clients of around £8m-£12m per year, although these will not fully arise for many years.
- There will be administration costs to the Legal Aid Agency (LAA) of £0.3m per year from processing around 9,000-13,000 additional extra magistrates' claims and 200 extra Crown Court claims per year. There will also be a one-off cost to the LAA of implementing the necessary IT, training, and guidance changes estimated at around £3m.
- Providers will need to do additional administrative work for the additional volumes and complexity (in collecting evidence and processing applications), along with other administrative burdens. This is estimated to cost around £1m pa.

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

Criminal legal aid providers who also provide private criminal work, as well as providers that exclusively undertake private work, may experience a reduction in the amount of private work available to them, as some of their client base will now be eligible for legal aid when they were previously ineligible.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate			10-15	N/A

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

- Recipients of legal aid who contribute towards their Crown Court legal costs will now be likely to pay no or smaller contributions under this option, providing them with an annual benefit of £2m-£3m. There will be clients in the magistrates' court and Crown Court who will benefit if they previously paid their legal costs privately (as they were ineligible for legal aid) but under this option are now eligible for contributory or non-contributory legal aid.
- Criminal legal aid providers will get a significant amount of additional work as a result of the changes, providing them with an estimated £8m - £11m.

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

Under the current means test, some clients may represent themselves, decide not to pursue legal proceedings or seek out other methods of representation due to being ineligible for legal aid. Under this option, if they become eligible, they will benefit from having legal representation.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
<p>The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.</p> <ul style="list-style-type: none"> <li>• Adults in the population who become eligible for legal aid will take it up at a similar rate to those who of a similar age, sex and who have the highest capital/income of those already eligible.</li> <li>• Any changes that arise as a result of increased access to legal aid are assumed to amount to a transfer between the LAA and legal aid providers and, as such, a net present value (NPV) is not included.</li> <li>• Cost estimates have been uplifted to account for the increases to solicitor and barrister fees agreed as part of the Criminal Legal Aid Independent Review.</li> </ul>		

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	Score for Business Impact Target (qualifying provisions only) £m:

<b>Costs:</b> N/A	<b>Benefits:</b> N/A	<b>Net:</b> N/A	
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# Evidence Base

## A. Background

1. Access to justice is a fundamental principle underpinning the rule of law. For society to adhere to the principle of access to justice, we must have a legal aid system which is accessible to those who need it. It is for this reason that legal aid is available in both civil and criminal cases, subject to assessment of financial eligibility, known as a means test.
2. Means testing has played a role in the legal aid system for a very long time, for good reason; it is important to focus taxpayer resources on those who need legal aid the most, rather than on those who can afford to pay for private legal advice and representation.
3. Assessment of financial eligibility for legal aid requires a calculation of individuals' means. Two types of financial resource may be assessed to determine eligibility: income (gross annual income and disposable annual income) and disposable capital assets (e.g. savings.) If these are above a given threshold, the applicant may not be eligible for legal aid or they may be asked to pay a financial contribution towards their legal support. The exact nature of the financial assessment conducted depends on whether civil or criminal legal support is required.
4. This Impact Assessment (IA) covers the impacts of criminal legal aid means test policies. There is a separate IA that addresses the civil legal aid means test policy impacts.

### The Criminal Legal Aid Means Test

5. Criminal legal aid covers criminal advice and assistance and advocacy assistance and is available for a range of criminal matters, spanning pre-charge to post-conviction proceedings at the Crown Court.
6. The criminal legal aid means test comprises of two income tests with separate income thresholds for each, followed (in some circumstances) by an assessment of capital. The gross income test is conducted first, followed by the disposable income test, and finally any necessary assessment of capital.
7. The Crown Court test offers both non-contributory legal aid and contributory legal aid, where applicants pay towards some of their legal costs from their income and (if convicted) their disposable capital. The Magistrates' Test is an in-or-out test where applicants are either eligible for non-contributory legal aid or ineligible for legal aid, and no capital assessment applies.
8. Another key feature of the criminal legal aid means test is the passporting mechanism. This mechanism allows people in receipt of certain Department for Work and Pensions (DWP) means-tested benefits to be automatically deemed eligible for non-contributory legal aid on the basis of income.
9. Historically, 'out-of-work benefits' have been used to passport individuals through the means tests, giving automatic eligibility to ensure that legal aid is targeted at those in greatest financial need. Passporting is used to assess legal aid eligibility so that financial information already collected from benefits recipients can in effect be used again, although the financial information itself is not shared – just the passporting status. This is an attempt to minimise the administrative burden for both households and government. The Crown Court means test currently passports through the capital means assessment; and

therefore, defendants in receipt of relevant passported benefits do not have to make a capital contribution if convicted.

10. Passporting is also a key part of the civil legal aid means test, although, unlike for criminal legal aid, this is subject to a capital assessment.

### The Means Test Review

11. Through the Means Test Review, we have undertaken a comprehensive reassessment of the criminal and civil legal aid means tests. The Review was brought about through a need to update the eligibility framework for legal aid, to bring it into line with the modern context.
12. The income and capital eligibility thresholds for both criminal and civil legal aid have not been updated (increased in value) for more than a decade. This means that the proportion of the population of England and Wales eligible for legal aid is falling year on year. It also means that the thresholds for eligibility are worth less in real terms than at the time they were introduced, so individuals who are ineligible for legal aid are likely to have less money available to spend on legal services than they would have had at the time the thresholds were introduced. It is important that the thresholds are set at the right level to help ensure individuals can access legal services when they need them.
13. Moreover, updates to the means test are required in order to bring the approach to means testing into line with the priorities of other government departments. The growing number of individuals transitioning from legacy benefits onto Universal Credit (UC) necessitates reconsidering the approach to means testing these individuals.
14. In light of these issues, in our 2019 Legal Support Action Plan we committed to reviewing the legal aid eligibility framework. As a result, the Means Test Review was published in 2022.
15. The Review has considered the legal aid means tests in the round, including not only the income and capital thresholds for legal aid eligibility, but also wider eligibility criteria in relation to means (including benefits passporting), and the income and capital contributions potentially payable towards the costs of representation in civil and family matters and at the Crown Court. As far as possible, we have revisited the existing rationales for our approach in these areas and further developed these where appropriate. The Means Test Review did not consider the merits and interests of justice tests for legal aid eligibility, the legal aid fee schemes or the scope of the legal aid system.
16. Improving eligibility for legal aid will mean that individuals can obtain legal advice to help resolve their legal problems whilst maintaining a basic standard of living. Individuals who at present narrowly fail the means test and can only access legal representation privately may face significant costs, as can those who have an unmet legal need. Often, those affected report having to forego material and social necessities during the period in question. Alternatively, some decide not to take up their offer of legal aid, potentially dropping their case altogether or appearing as a litigant in person.
17. Increasing access to legal aid will increase volumes of legal aid spend, therefore potentially improving the viability of legal aid providers (most of which are SMEs) across England and Wales, particularly in locations and areas of legal aid practice which are currently undersupplied.
18. Whilst the consultation was open, the cost of living and inflation increased materially compared to the preceding years. This was a consistent theme in many of the responses.

The original proposals establishing a cost of living allowance (COLA) were based on the Office of National Statistics (ONS) Living Costs and Food survey data, as it provided a comprehensive analysis of average household spending and is used across government, including DWP who use it to assess benefits levels. Once available, we will review the next iteration of this survey data, and will consider the thresholds prior to their implementation.

19. However, we note that legal aid means testing policy is subject to the fiscal pressures which currently apply across government. This means that we are not able to commit to uprating the thresholds prior to implementation. Whilst we will seek to ensure that the new means test properly reflects the typical cost of living, we will be required to make a decision about the threshold levels implemented in the context of wider budgetary decision making.

## **B. Rationale and Policy Objectives**

### Rationale

20. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
21. The principal rationale for government intervention is equity. It is the intention of the Means Test Review to implement a policy which treats people equally and delivers fair outcomes, whether they are in receipt of benefits or not, as well as ensuring that government resources are targeted at those who need it most to deliver best public value.
22. A further rationale is to achieve economic efficiency and value for money for the taxpayer. The Means Test Review looked at each element of the legal aid means test to ensure that there is a robust rationale for where we set eligibility limits and make allowances and disregards to capital and income. The rationales for each policy element are set out in the Means Test Review consultation (2022) and response (2023) documents.

### Policy objectives

23. The associated policy objectives are to support access to justice by ensuring that legal aid is available to those who are most in need while also ensuring that those who are able to contribute towards their legal costs do so. The Means Test Review also consolidated assessment practises and aligned processes across criminal and civil legal aid as far as possible.
24. Greater access to criminal legal aid in England and Wales will also help ensure that those charged with a criminal offence, or in need of advice or advocacy assistance, can access legal representation when appropriate, and that any required income contribution is affordable. This will help ensure access to justice.

## C. Affected Stakeholder Groups, Organisations and Sectors

25. The following groups will be most directly affected by the options assessed in this IA:

- **Criminal legal aid clients.** This includes individuals in England & Wales who have been charged with a criminal offence, or who are in need of advice and assistance (including advocacy assistance) in relation to a criminal matter.
- **The Legal Aid Agency (LAA),** which is responsible for administering the means test for legal aid at the Crown Court and magistrates' court and processing claims.
- **Criminal legal aid providers,** including private businesses and not-for-profit organisations such as law centres. Third sector organisations who provide advice on legal matters and providers that exclusively undertake private criminal work will also be affected. The advice and assistance and advocacy assistance means tests are delegated to legal aid providers.
- **Taxpayers,** who ultimately fund the Legal Aid Fund.

## D. Options under Consideration

26. The following options are assessed in this IA:

- **Option 0/do nothing:** Continue with the existing test, including the thresholds and continuing to passport all recipients of Universal Credit (UC), as it is further rolled out.
- **Option 1:** Increase the income thresholds for legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of UC, except for those areas of advice and assistance and advocacy assistance which remain means tested.

27. Option 1 is preferred as it best meets the policy objectives.

### Option 0/Do nothing

28. Under this option the existing test thresholds will remain, and all recipients of UC will be passported as it is further rolled out.

29. As the income and capital thresholds for legal aid eligibility have not been updated for more than a decade, the proportion of the population eligible for legal aid (not in receipt of UC) will continue to fall. It will also mean that the thresholds for eligibility will continue to be worth less in real terms than at the time they were introduced, so individuals who are ineligible for legal aid will have less money available to spend on legal services for crime related matters than they would have at the time the thresholds were introduced.

30. There is an equity impact associated with Option 0. This is because UC can be awarded to people with income in excess of our current eligibility thresholds, meaning that UC recipients will be eligible for legal aid where non-UC recipients on similar incomes are not.

31. In summary, under Option 0 fewer people will be able to access legal aid, and more people who are ineligible for legal aid will be unable to afford legal services.

### Option 1

32. Under this option, the following changes will be made to the criminal legal aid means test:



- The Cost of Living Allowance (COLA) will be updated.
  - The £37,500 upper disposable income threshold for the Crown Court test will be removed.
  - Homeowners in receipt of passporting benefits who are convicted in the Crown Court will become subject to capital assessment in the same way as non-passported legal aid recipients.
  - The magistrates' test gross and disposable income thresholds will be increased.
  - The Crown Court income contributions will be reviewed.
  - The Criminal Advice and Assistance and Advocacy Assistance means tests will be aligned with the means test for Civil Legal Help and Controlled Work.
33. The current COLA uses median household expenditure (as captured by the annual Office of National Statistics (ONS) living costs survey) on a range of items, including all spending deemed essential but excluding alcohol and tobacco, restaurants and hotels, and culture and recreation. This enables an assessment of how much income individuals need to cover their essential living costs before they are able to contribute anything towards their legal costs. The current fixed cost of living allowance is £5,676 per year for a single person.
34. There is currently an upper disposable income threshold for the Crown Court test set at £37,500 per annum. If a defendant has applied for legal aid but has been found ineligible due to their disposable income being above the upper threshold and is acquitted, they are entitled to a partial refund of their private defence costs, via a Defendant's Cost Order (DCO), based on legal aid rates rather than what they paid privately.
35. Some concerns have been raised about this approach, as a defendant at the Crown Court who has been acquitted of a crime may nevertheless find themselves out of pocket, due to the discrepancy between the private legal fees they have paid for their defence and the refund they receive at (typically lower) legal aid rates. Therefore, under this option, we plan to remove the upper disposable income threshold meaning that all defendants, whatever their means, will be entitled to contributory legal aided representation as a minimum.
36. There is currently no capital eligibility assessment for legal aid at the Crown or magistrates' court. However, convicted defendants at the Crown Court may be required to make a contribution towards their legal aid costs from any capital assets over £30,000 (including equity in property as well as liquid assets). Currently, convicted defendants in receipt of a passporting benefit (including UC) are passported through the capital assessment in the Crown Court and do not have to make a capital contribution. Under this option, convicted defendants in receipt of passporting benefits who do own property will undergo a full capital means assessment (of their property and any other capital) and will be required to contribute towards their legal aid where they have capital above the threshold of £30,000.
37. The current magistrates' court means test came into force in 2006 and the income thresholds have not been updated since 2008. Option 1 will update the gross income thresholds and update the disposable income allowance to twice the typical private fee for the magistrates' test.
38. The structure of the Crown Court income contribution has also been reviewed and Option 1 will implement: i) a new minimum contribution of £100 per month; ii) a new 3-tiered contribution rate system that will replace the current 90% contribution rate; iii) a rise in the maximum number of months that a defendant will contribute, from 6 months to 18 months.

39. Option 1 will also make both the advice and assistance and advocacy assistance tests the same and align them with the new means test for civil legal help and controlled work.
40. We plan to implement the changes to non-means tested areas first, followed by those to civil legal aid, followed by those for criminal legal aid. This will involve laying secondary legislation and changing the published guidance on means testing. Once the regulations have come into force, the LAA will be responsible for the ongoing delivery of means testing for legal aid.
41. As part of our transitional arrangements, defendants who are granted contributory legal aid at the Crown Court before the new changes are introduced will have the option to apply for a reassessment under the new rules once they come into force; this includes reassessment of their liability to pay an income contribution. The outcome of any reassessment under the new rules will not apply retrospectively. This means that any income contributions which fell due for payment or were paid under the pre-implementation rules will be unaffected.

## **E. Cost and Benefit Analysis**

42. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
43. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. The government's approach to IAs 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 policy impacts differently on particular groups of society or changes in equity and fairness.
44. In IAs, the impacts of the options considered are normally compared to the 'do nothing' baseline. In this IA, however, two passporting baselines have been used to measure the impacts of Option 1 and the analysis in this section explores the impacts against both baselines. Paragraphs 53-58 explain in more detail why this approach has been used.
45. While it is normal to use real prices in IAs, in this IA the ongoing costs and benefits are presented on a steady state annual basis and are in nominal prices (for the price year 2022-23). Costs are not presented in real terms in legal aid primarily because fees are not increased in line with inflation and also due to the uncertainty around volumes, court sitting days and other related policies.
46. One-off digital costs are assumed to be incurred in the financial years 2023-24 and 2024-25 and are also presented in nominal prices.
47. No optimism bias (OB) is applied to any fund or administrative costs or benefits as the steady state range presented attempts to capture the uncertainty in the underlying modelling, but OB has been applied to the digital costs.
48. Unless otherwise stated, the quantitative estimates in this IA have been rounded as follows: financial estimates have been rounded to the nearest £100,000 for estimates below £1m, and to the nearest £1m for estimates of £1m or more. Non-financial estimates have been rounded to the nearest 100. This rounding methodology does not apply to

figures quoted from legislation. The components in tables may not sum to the total due to rounding.

49. Any changes that arise as a result of increased access to legal aid, are assumed to amount to a transfer between the LAA and legal aid providers and, as such, a net present value (NPV) is not included.

## **Methodology**

### **Modelling Approach**

50. Estimating the impacts of Option 1 is complex and uncertain. In order to assess the options discussed in this IA, MoJ analysts have developed simulation models which provide the capabilities to estimate these impacts, including:
- the change in legal aid fund spend
  - the change in legal aid certificate volumes
  - an assessment of the adults and households in the population who will experience a change in legal aid eligibility outcome
51. The simulation models use the Family Resources Survey (FRS) and DWP Policy Simulation Model data to estimate the future circumstances of households in England & Wales, including their financial and demographic characteristics. This data has been used to provide indicative estimates of the population's legal aid eligibility under the current means test.
52. Using data on actual legal aid grants, the models calculate and attach an estimate of the rate at which eligible people take up legal aid currently, depending on their age, sex and levels of income. The models then repeat a similar process to estimate the number of adults in the population that will become eligible for legal aid under a new means test. The models then use the previously derived take-up rate calculations to assess how the newly eligible population will take up legal aid. Finally, by applying average gross cost assumptions and estimates for the amount of contributions individuals will pay (in the Crown Court), the models further estimate the cost impacts to the legal aid fund.
53. There are some elements of Option 1 that cannot be modelled using the above approach due to data limitations, for example, changes to the advocacy assistance, advice and assistance, sentencing and appeals means tests. The costs of these policies are therefore estimated using more high-level approaches. Annex B covers this in more detail. Finally, the criminal cost estimates have been uplifted to account for the fee uplifts that have been implemented for solicitors and barristers following the Criminal Legal Aid Independent Review<sup>1</sup>.

### **The Baseline**

54. As noted in the Background section, in 2013 we introduced 'income passporting' for all UC recipients to the legal aid means test as an interim measure, until a new scheme for passporting UC recipients could be devised. This was because at the time only recipients of legacy passporting benefits were being rolled onto UC, and so including UC as a passporting benefit would have had little to no additional impact on the number of applicants being passported.

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<sup>1</sup> Please see here for further information: <https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid>

55. However, this interim measure, which was designed to replicate legacy benefits in the short term, has become a longer-term position where many more claimants have moved onto UC. This includes those in work who would have been in receipt of housing benefit or tax credits and would not previously have been income passported for legal aid purposes.
56. This is important to note when setting a baseline because the benefits system is currently in transition, with recipients of legacy benefits being moved on to UC. It is therefore difficult to set a fixed current baseline for the Means Test Review because the impact of passporting all recipients on UC (our current policy) is changing constantly.
57. As such, we have estimated eligibility against two baselines using 2017/18 population data uprated to 22/23 forecast financials, which is the most up-to-date DWP data we hold. The first baseline is based on the legacy system of benefits and the second one assumes that UC is fully rolled out to everyone. The following summary should make this clear:
- Baseline 1:** This baseline assumes that all benefit recipients are still on their legacy benefit, and we therefore passport those who are entitled to income-based Job Seekers Allowance (JSA), income-based Employment and Support Allowance (ESA), Income Support (IS) and the Guarantee element of Pension Credit.
- Baseline 2:** This baseline assumes that all legacy benefit recipients are transitioned to UC (including legacy recipients of in-work benefits such as tax credits), and that all of these recipients are passported through the income test.
58. The first of these baselines demonstrates the ‘benefit’ to the population of the changes to the legal aid means assessment, against our pre-UC position; the second of these baselines demonstrates the benefit of changes to the means test from a position where all individuals have been transitioned to UC.
59. As, in reality, our baseline is somewhere between these two states, the analysis against a legacy baseline (Baseline 1) will overestimate the number of those benefitting whereas assessing the impacts against a UC baseline (Baseline 2) will underestimate the number of those benefitting.

**Option 1: Increase the income thresholds for legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of Universal Credit (UC).**

## **Baseline 1**

60. As explained above, we are not able to model the impacts of the new means test against a baseline which precisely reflects who gets legal aid today. The following section outlines the impacts to Option 1 when compared to the baseline where all benefit recipients are still on their legacy benefit, and we therefore passport those who are entitled to income-based Job Seekers Allowance (JSA), income-based Employment and Support Allowance (ESA), Income Support (IS) and the guaranteed element of Pension Credit (Baseline 1).

### **Costs of Option 1**

#### *Legal Aid Clients*

61. A small number of legal aid clients will bear a cost as a result of the Option 1 policies. The costs will arise where a client’s eligibility status changes from being eligible for legal aid to ineligible, or where the client moves from non-contributory to contributory legal aid. Our

estimates suggest that a negligible number of magistrates' court clients and around 2,000 Crown Court clients per annum will see such a change. At steady state, these legal aid clients are estimated to be liable to pay total contributions of £6m-£9m per annum in cases where increased contributions will be owed. These costs will not be realised for many years because the main effect will be on convicted defendants with property assets, where a charge could be placed on the property and redeemed when it is sold.

#### *Criminal Legal Aid Providers*

62. There will be costs for criminal legal aid providers for completing and submitting additional applications for assessments. We do not hold data on provider administrative work, but for the purposes of this IA we have derived an illustration of what the impacts may look like. This illustration suggests that the additional administrative costs may accrue to a total of around £1m per year, but some of this will be paid for by additional legal aid payments. This illustration can be found in Annex A.
63. Criminal legal aid providers who currently undertake private work, along with providers who exclusively undertake private work may lose out from Option 1 if their clients now take up legal aid instead such that either i) clients decide to use an alternative provider who offers legal aid, or ii) clients who would previously have paid privately will now be entitled to legal aid, reducing the fee available to the provider.

#### *The LAA*

64. Under Option 1, the increase in annual cost to the Legal Aid fund is expected to be £6m - £12m per annum, once in steady state. There will also be additional LAA administration costs as a result of this option, estimated to be £0.4m per year. The LAA will need to process an increased level of claims, anticipated to rise by 13,000-20,000 magistrates' court claims per year, and around 200 Crown Court claims. There will be one-off costs to the LAA of around £3m to cover the IT changes required for the new means testing arrangements, but this includes changes to the civil means test too and is difficult to separate these.

### **Benefits of Option 1**

#### *Legal Aid Clients*

65. A considerable number of people will benefit as a result of the Option 1 policies for magistrates' court and Crown Court assessment changes (including advocacy assistance, sentences & appeals and advice & assistance areas). This is because Option 1 will result in them having an improved outcome from the means test. For example, their eligibility status may change from ineligible to eligible, or from contributory to non-contributory in the Crown Court (clients do not pay contributions towards their legal aid in the magistrates' court).
66. The extent of how people will benefit varies widely. Some people may have previously been ineligible for legal aid altogether and under Option 1 may be eligible for contributory or non-contributory legal aid; whereas some people may only benefit from making a small saving on the contributions they make.
67. It is estimated that around 13,000 to 20,000 clients in the magistrates' court and 100 to 300 clients in the Crown Court will benefit annually by moving from being ineligible for legal aid to being eligible. A further 7,000 to 10,000 clients in the Crown Court are estimated to see their annual contributions decrease, by a total of around £3m-£4m. The additional steady state legal aid fund spend on clients who will benefit (including those in receipt of Advocacy Assistance, Sentences and Appeals, and Advice and Assistance, and including clients who are expected to remain contributory but contribute less) is expected to be £13m-£20m per annum.

### *Criminal Legal Aid Providers*

68. As a result of the changes, criminal legal aid providers will have additional funded work through the increase in volumes of magistrates' and Crown Court cases (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance). Criminal legal aid providers are estimated to receive £10m-£15m in additional funded work.

### **Net Impact**

69. Table 1 shows the estimated Legal Aid fund spend at steady state, split by the areas of criminal legal aid that Option 1 covers.

*Table 1: Annual steady state net additional spending by type of criminal legal aid (£m) under Option 1 (Baseline 1)*

	<b>Additional Spend</b>
<b>Crown Court</b>	-£3m to -£2m
<b>Magistrates'</b>	£8m - £12m
<b>Advice and Assistance</b>	£0.4m - £0.6m
<b>Advocacy Assistance</b>	£0.4m - £0.6m
<b>Sentences and Appeals</b>	£0.9m - £1m
<b>Total*</b>	<b>£6m - £12m</b>

\*Sum of lower and upper ranges may not add to the total lower and upper range due to rounding

70. The changes under Option 1 will result in a net saving of around £2m to £3m in the Crown Court, with the savings from the change to the post-conviction capital assessment exceeding the cost of the income test changes. The changes to the magistrates' test are estimated to cost around £8m - £12m at steady state due to the uplifting of the income test thresholds. The costs to other areas of criminal legal aid are estimated to total around £2m.

71. The one-off implementation costs will be £2m and will cover any IT changes but this includes changes to the civil means test too and is difficult to disaggregate.

## **Baseline 1: Further Analysis**

### **Analytical Scope**

72. This following section of the IA will explore; the impacts of changing the means test on the general population eligibility; the costs to the legal aid fund; and the individuals who benefit or have a detrimental outcome from Option 1, at a population and legal aid volume level.

73. Further detailed analysis can be found in Annex B, which looks at the impacts on protected characteristics and other characteristics such as family type, housing tenure and household income. The impacts on the protected characteristics are also explored in more detail in the Equality Assessment for the Means Test Review.

### **Population Eligibility**

74. Using the population data, we can estimate the adult population's entitlement to legal aid under the current means test where we assume that legacy benefits were in place (Baseline 1). Please note, we are not able to understand the populations impacts for the policies, as mentioned previously, where we have limited data (these can be found in more

detail in Annex B). The tables below estimate the breakdown of eligibility for the magistrates' court and Crown Court legal aid, where an additional split is applied in the Crown Court to show the proportion of the population that will be required to pay a capital contribution (i.e., having over £30k of disposable capital) if they were convicted.

*Table 2: The adult population eligibility in the magistrates' court, under Option 0 (Baseline 1)*

<b>Eligibility Outcome</b>	<b>Income Test</b>
<b>Non-contributory</b>	28%
<b>Contributory</b>	0%
<b>Ineligible</b>	72%
<b>Total</b>	100%

*Table 3: The adult population eligibility in the Crown Court, under Option 0 (Baseline 1)*

<b>Income Result</b>	<b>Capital Result (assuming assessed)</b>		
	<b>Non-contributory</b>	<b>Contributory</b>	<b>Total</b>
<b>Non-contributory</b>	22%	8%	29%
<b>Contributory</b>	22%	28%	50%
<b>Ineligible</b>	20%	0%	20%
<b>Total</b>	64%	36%	100%

75. The analysis has also been replicated based on the future means test under Option 1 (see tables 4 & 5). In the Crown Court, everybody will be eligible for legal aid due to the removal of the £37,500 threshold, compared to 80% of the population under a pre-UC baseline. A larger proportion of the population will be entitled to non-contributory legal aid based on the income test, (37% compared to 29% in the baseline).
76. However, Option 1 means those who are income passported will not be passported through the capital test (applied at the end of the case if the defendant is convicted) if they are a homeowner, and this increases the number of people who will be expected to pay capital contributions at the end of the case. In the magistrates' court a larger proportion of the population will be entitled to non-contributory legal aid (rising from 28% to 39%), mainly due to the increase in the disposable income threshold and the updated cost of living allowance.

*Table 4: The adult population eligibility to the magistrates' court test under Option 1 (Baseline 1)*

<b>Eligibility Outcome</b>	<b>Income Test</b>
<b>Eligible</b>	39%
<b>Contributory</b>	0%
<b>Ineligible</b>	61%
<b>Total</b>	100%

*Table 5: The adult population eligibility to the Crown Court test under Option 1 (Baseline 1)*

<b>Income Result</b>	<b>Capital Result (assuming assessed)</b>			<b>Total</b>
	<b>Eligible</b>	<b>Contributory</b>	<b>Ineligible</b>	
<b>Eligible</b>	25%	11%	0%	37%
<b>Contributory</b>	19%	45%	0%	63%
<b>Ineligible</b>	0%	0%	0%	0%
<b>Total</b>	44%	56%	0%	100%

## Cost Breakdown

77. Option 1 includes a considerable number of changes to the criminal means tests. Below, we provide a breakdown of how the total legal aid fund impacts are disaggregated between the different components of the means test changes. These costs use the mid-point of the estimated range of steady state impacts but the uncertainty around all the figures should be taken into consideration.
78. Changes to individual components of the means test can interact with other parts of the means test. Therefore, the below tables are hierarchical, such that the various components are assumed to be implemented in top to bottom order. For example, when considering the impacts of changing the contributions system, it is assumed that the changes to the income thresholds part of the test have already been implemented.

*Table 6: Impact breakdown by means test component in the magistrates' court and other areas of criminal legal aid under Option 1 (Baseline 1, to the nearest £m)*

<b>Component</b>	<b>Cost (£m)</b>
<b>Income test</b>	9
<b>Passporting</b>	1
<b>Advocacy Assistance</b>	0.5
<b>Advice and Assistance</b>	0.5
<b>Sentences and Appeals</b>	1
<b>Total</b>	12

*Table 7: Impact breakdown by means test component in the Crown Court under Option 1 (Baseline 1, to the nearest £m)*

<b>Component</b>	<b>Cost (£m)</b>
<b>Income test</b>	3
<b>Contributions</b>	1
<b>Income and capital passporting</b>	-6
<b>Total</b>	-2

79. Tables 6 and 7 above show that the changes to the gross and disposable income tests for both magistrates' and Crown Court are by far the most impactful of all the changes (£12m). For the magistrates' court, this is driven by the number of adults in the population that we estimate will become eligible as a result, whereas in the Crown Court the driver is both the impact of removing the £37,500 threshold, and the increase in the cost of living allowance, which means that some legal aid recipients will pay reduced or no contributions.
80. The changes to the Crown Court contributions policy include; the introduction of the new tiered income contributions system, the reduction of the minimum monthly income contribution (anyone who is calculated to have less than £100 monthly contributions will not have to pay any contributions, compared to the current £250), and the change in the maximum months of contributions from 6 months to 18. This will amount to a net cost of £1m per year to the legal aid fund.
81. Since we are comparing against a legacy passporting test, there will be passporting costs when we passport all individuals on UC. In the magistrates' court test, the costs will be



relatively small (£1m) because those on UC will very often get legal aid through the full means test. However, for the Crown Court test, the passporting costs cover both the income and capital passporting changes. There will be a small cost to passporting all individuals on UC through the income test, but the removal of capital passporting for all homeowners that are on UC will be far more significant, resulting in an overall saving of £6m.

82. These are steady state cost/savings, and it will take a considerable amount of time for the LAA to recover these additional capital contributions since in almost all cases they come from equity in a property, and the contribution will usually be paid upon the property being sold. Additionally, the savings estimates from the capital passporting changes are very uncertain because we do not know how much of the debt will be recovered amongst this cohort of the population.

### **Individuals who have a beneficial or detrimental outcome from Option 1 under Baseline 1**

83. Individuals could see a beneficial or detrimental impact to their eligibility (compared to their baseline eligibility), and this can vary by amount too. For example, somebody who was ineligible for legal aid in the Crown Court previously but will receive non-contributory legal aid under Option 1 will make a considerable saving to their private legal costs compared to if they paid for legal services privately, whereas somebody who would have previously paid a small amount of contributions may only make a small saving if they become eligible for non-contributory legal aid in the future. This will not be the case in the magistrates' court, where there is no contributory element.
84. For the purposes of the analysis in the Crown Court, we have defined those who benefit or see a detrimental impact based on whether their eligibility outcome has changed between receiving non-contributory, contributory or no legal aid. This means that somebody is said:
- to have benefitted if they previously were not eligible for legal aid, but under Option 1 are entitled to non-contributory or contributory legal aid.
  - to have benefitted if they were previously entitled to contributory legal aid but under Option 1 are entitled to non-contributory legal aid.
  - to have a detrimental outcome if they previously were eligible for non-contributory legal aid but under Option 1 are entitled to contributory or no legal aid
85. We do not include the individuals who continue to pay contributions towards their legal aid but see a change to their contribution amount, although these cases are captured in the overall cost projections. This is to ensure that we only look at individuals who have a significant change to their outcome.
86. Using the 2017/18<sup>2</sup> Family Resource Survey and DWP Policy Simulation Models, we can estimate the impacts of Option 1 at a population level and at a legal aid volume level. A more detailed level of analysis is required to calculate the legal aid impacts, and therefore these are more uncertain than the overall population estimates.
87. We can also use this modelling to analyse the estimated steady state equalities impacts, found in Annexes B and C and in the accompanying Equalities Assessment. The equalities analysis does not capture all those who benefit from Option 1 because we are unable to

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<sup>2</sup> We recognise that the data is based on the population from a number of years ago (2017/18). This is because DWP need a significant amount of time to recalibrate the survey data to actual benefit income and to implement their forecasts on future policy (such as Universal Credit). We then use this data to feed into our models which are highly complex and takes time to analyse, we are therefore operating on a lag with respect to the time period of the data underpinning the analysis. However the financial data in the models are updated to the price year 22/23 and we do not think the annual population changes would be significant (although COVID-19 impacts on households might be considerable – but we wouldn't be able to use reliable up to date data on this at this point).

assess accurately some of the more minor changes to the means test. In addition, the beneficial and detrimental outcome analysis only explores the core changes to the magistrates' and Crown Court tests and does not capture some of the bespoke changes. This is explained in more detail in Annex B.

- 88. Tables 8 & 9 below show that Option 1 will result in a significant number of people with a beneficial outcome rather than detrimental, relative to baseline 1. For the magistrates' means test, 11% of the population will benefit, and for the Crown Court test 26% of the population will have a beneficial outcome. This Crown Court figure would be higher if we considered those who saw a reduction in the amount of their monthly contribution. The tables show that <1% of the population will lose out from the magistrates' policy and 2% in the Crown Court. These individuals can be negatively impacted because of one of two reasons.
- 89. In the legal aid means test at the magistrates' court, there is a difference in the equivalisation metric (a measure that takes account of the differences in a household's size and composition) which sees the weighted income of a small minority of individuals change. The individuals' weighted income was previously near but just under the thresholds (therefore making them eligible) but under Option 1 it will be calculated to be just over the new thresholds, making them ineligible.
- 90. In the Crown Court, the majority of those who see a detrimental impact will do so because of the capital passporting changes, which will result in some income passported individuals having to pay a capital contribution because of the equity they have in their property, if they are convicted. Since they will go from a position of being non-contributory to potentially paying a contribution, they are defined as suffering a detrimental impact.

*Table 8: Number of adults in the population whose eligibility will change in the magistrates' court under Option 1 (Baseline 1)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Population</b>	5,000,000	100,000
<b>%</b>	11%	0%

*Table 9: Number of adults in the population whose eligibility will change in the Crown Court under Option 1 (Baseline 1)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Population</b>	11,800,000	900,000
<b>%</b>	26%	2%

- 91. Tables 10 & 11 show the change in case volumes as a result from the Option 1 changes and whether those individuals have benefitted or faced a detrimental impact. Note, these estimates are rounded and are best point estimates, but they do have considerable uncertainty around them. The expected change in case volumes have been presented as a range elsewhere in this IA to reflect this uncertainty.

*Table 10: Number of additional magistrates' court cases from those who have a change in eligibility under Option 1 (Baseline 1)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Case Volume Change</b>	17,000	100

*Table 11: Number of additional Crown Court cases from those who have a change in eligibility under Option 1 (Baseline 1)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Case Volume Change</b>	200	-

92. Table 12 shows the number of individuals who will see their eligibility change under Option 1 using estimated case volumes. Table 12 shows 3,000 benefitting from the changes in the Crown Court test and around 2,000 being detrimentally impacted. Those who are negatively impacted are likely those who will be expected to contribute after the capital test changes.
93. For the impact analysis in Annex B, where volume breakdowns are provided, the volumes being referenced are the volumes of individuals who will see their eligibility change under option and not the change in overall volumes.

*Table 12: Number of individuals who see their eligibility change in the Crown Court under Option 1 (Baseline 1)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Estimated Volume</b>	3,000	2,000

94. Further detailed analysis can be found in Annex B.

## **Baseline 2**

95. As explained in the ‘setting a baseline’ section above, we are not able to model the impacts of the new means test against a baseline which precisely reflects who gets legal aid today. The following section therefore outlines the impacts of Option 1 when compared to the baseline of passporting all individuals on UC (Baseline 2).

### **Costs of Option 1**

#### *Legal Aid Clients*

96. A small number of legal aid clients will bear a cost as a result of Option 1. The costs will arise where a client’s eligibility status changes from being eligible to ineligible, or where they move from non-contributory to contributory legal aid. Our estimates suggest that a small number of legal aid clients in the magistrates’ court and around 3,000 clients in the Crown Court will see such a change. At steady state, clients are estimated to have costs of £8m-£12m per annum in cases where increased contributions will be owed. These costs will not be realised for many years because the main effect will be on convicted clients with property assets, where a charge could be placed on the property and redeemed when it is sold.

#### *Criminal Legal Aid Providers*

97. As covered in the analysis against Baseline 1, there will be administrative costs to providers. These will be less against a UC passporting baseline because the additional volumes will be lower. It is expected that there will be an additional administrative cost of around £1m.
98. Criminal legal aid providers who currently undertake private work, along with providers who exclusively undertake private work may lose out from the policies if their clients now take up legal aid instead such that either i) clients decide to use an alternative provider

who offers legal aid, or ii) clients who would previously have paid privately will be entitled to legal aid under Option 1, reducing the fee available to the provider.

*The LAA*

99. Under Option 1, the increase in annual cost to the Legal Aid fund is expected to be -£1m to £5m per annum, once in steady state. There will also be additional LAA administration costs as a result of this option, estimated to be £0.3m per year. The LAA will need to process an increased level of claims, anticipated to rise by 9,000 – 13,000 in the magistrates’ court per year, and around 200 Crown Court cases. There will be one-off costs to the LAA of around £3m to cover the IT changes required for the new means testing arrangements, but this includes changes to the civil means test too which is difficult to disaggregate.

**Benefits of Option 1**

*Legal Aid Clients*

- 100. A considerable number of people will benefit as a result of the Option 1 policies for magistrates’ and Crown Court assessment changes (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance areas). This is because the impacts of the policy will result in them having an improved outcome from the means test, e.g., their eligibility status may change from ineligible to eligible.
- 101. The extent of how people benefit can vary widely, some people may have previously been ineligible for legal aid altogether and under Option 1 be eligible for contributory or non-contributory legal aid, whereas some people may only benefit from making a small saving on the contributions they make.
- 102. It is estimated that around 9,000 to 13,000 clients in the magistrates’ court and 100 to 300 clients in the Crown Court will benefit annually by moving from ineligible to eligible. A further 6,000 to 9,000 clients in the Crown Court are estimated to see their annual contributions decrease, by around £2m-£3m. The additional steady state fund spend on clients who will benefit overall (including those in receipt of Advocacy Assistance, Sentences and Appeals, and Advice and Assistance, and including clients who are expected to remain contributory but contribute less) is expected to be £10m - £15m per annum.

*Criminal Legal Aid Providers*

103. As a result of Option 1, criminal legal aid providers will have additional funded work through the increase in volumes of magistrates’ and Crown Court cases (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance). Criminal legal aid providers are estimated to receive £8m-£11m in additional funded work.

**Net Impact**

104. Table 13 shows the overall estimated annual impact to the Legal Aid fund at steady state, split by the areas of criminal legal aid that Option 1 covers.

*Table 13: Annual steady state additional spending by type of criminal legal aid £m, under Option 1 (Baseline 2)*

	<b>Additional Spend</b>
<b>Crown Court</b>	-£7m to -£5m
<b>Magistrates'</b>	£5m - £7m
<b>Advice and Assistance</b>	£0.4m - £0.6m

<b>Advocacy Assistance</b>	£0.4m - £0.6m
<b>Sentences and Appeals</b>	£0.9m - £1.3m
<b>Total*</b>	<b>-£1m to £5m</b>

*\*Sum of lower and upper ranges may not add to total lower and upper range due to rounding*

105. When comparing to a baseline where UC is fully rolled out and all recipients are passported, the policies for Option 1 will result in a net saving of around £5m to £7m in the Crown Court with the savings from the change to the post-conviction capital assessment exceeding the cost of the income test changes. The magistrates' assessment is estimated to cost around £5m - £7m at steady state due to the uplifting of the income test thresholds. Costs to other areas of criminal legal aid are estimated to total at around £2m.
106. The one-off implementation costs will be £2m and will cover any IT changes but this includes changes to the civil means test too and is difficult to disaggregate.

## **Baseline 2: Further Analysis**

### **Analytical Scope**

107. This following section of the IA will explore; the impacts of changing the means test on the general population eligibility; the costs to the legal aid fund; and the individuals who benefit or have a detrimental outcome from Option 1, at a population and legal aid volume level.
108. Further detailed analysis can be found in Annex C, looking at the impacts on protected characteristics and other characteristics such as family type, housing tenure and household income. The impacts on protected characteristics are also explored in more detail in the Equality Assessment for the Means Test Review.

### **Population Eligibility**

109. We can estimate the adult population's entitlement to legal aid under the existing means test, assuming that UC is already fully rolled out and everybody in receipt of UC is passported. Under this scenario, more people will be passported through the means test who may have previously been entitled to contributory or no legal aid. Please note, we are not able to understand the populations impacts for the policies, as mentioned previously, where we have limited data (these can be found in more detail in annex C).
110. The tables below estimate the breakdown of eligibility for the magistrates' court and Crown Court legal aid, where an additional split is applied in the Crown Court to show how many clients may be required to pay a capital contribution (i.e. having over £30,000 of disposable capital) if they were found guilty.
111. In the tables, an eligibility outcome of 'eligible' means an applicant will be eligible for non-contributory legal aid, compared to a 'contributory' outcome which means an applicant will be eligible for contributory legal aid.

Table 14: The adult population eligibility in the magistrates' court under Option 0 (Baseline 2)

Eligibility Outcome	Income Test
Eligible	31%
Contributory	0%
Ineligible	69%
Total	100%

Table 15: The adult population eligibility in the Crown Court under Option 0 (Baseline 2)

Income Result	Capital Result (assuming assessed)		
	Eligible	Contributory	Total
Eligible	26%	7%	33%
Contributory	19%	28%	47%
Ineligible	20%	0%	20%
Total	66%	34%	100%

112. The analysis has also been replicated based on the future means test under Option 1 and is shown below in tables 16 & 17. In the Crown Court, everybody is eligible for legal aid due to the removal of the £37,500 upper disposable income threshold. A larger proportion of the population are entitled to non-contributory legal aid based on the income test, (33% to 37%).

113. However, due to changes in capital passporting rules, fewer will be eligible to non-contributory legal aid overall as only non-homeowners on passported benefits will be passported through the capital assessment. In the magistrates' court a larger proportion of the population are entitled to non-contributory legal aid (31% to 39%), mainly due to the increase in the disposable threshold and the updated cost of living allowance.

Table 16: The adult population eligibility to the magistrates' court test under Option 1 (Baseline 2)

Eligibility Outcome	Income Test
Eligible	39%
Contributory	0%
Ineligible	61%
Total	100%

Table 17: The adult population eligibility to the Crown Court test under Option 1 (Baseline 2)

Income Result	Capital Result (assuming assessed)		
	Eligible	Contributory	Total
Eligible	25%	11%	37%
Contributory	19%	45%	63%
Ineligible	0%	0%	0%
Total	44%	56%	100%

#### Individuals who have a beneficial or detrimental outcome from Option 1 under Baseline 2

114. Tables 18 & 19 show the adult population's change in eligibility in the magistrates' and Crown Court compared to the UCAll baseline. For the magistrates' means test, 8% of the

population will benefit, and for the Crown Court test, 23% of the population will stand to have a beneficial outcome, although this would be higher if we looked at those who have reduced contributions. The tables show that <1% of the population will lose out from the magistrates' policy.

115. Table 19 shows that 4% of the population will lose out from the changes to the Crown Court test. In addition to the reasons listed above, this is due to the capital passporting changes, resulting in individuals moving from passported non-contributory legal aid to contributory.

*Table 18: Number of adults in the population level whose eligibility has changed in the magistrates' court under Option 1 (Baseline 2)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Population</b>	3,300,000	100,000
<b>%</b>	7%	0%

*Table 19: Number of adults in the population level whose eligibility has changed in the Crown Court under Option 1 (Baseline 2)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Population</b>	10,600,000	1,700,000
<b>%</b>	23%	4%

116. Tables 20 & 21 show the change in case volumes as a result of the Option 1 changes and whether those individuals will benefit or not. These estimates are rounded and are best point estimates, but they do have considerable uncertainty around them. The change in case volumes has been presented as a range elsewhere in this IA to reflect this uncertainty.

*Table 20: Change in magistrates' court volumes for those who have a change in eligibility under Option 1 (Baseline 2)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Case Volume Change</b>	11,000	100

*Table 21: Number of additional Crown Court volumes from those who have a change in eligibility under Option 1 (Baseline 2)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Case Volume Change</b>	200	-

117. Whilst table 21 shows the change in eligibility of additional Crown Court volumes as a result of Option 1, table 22 shows the volumes of individuals who will see their eligibility change under Option 1 whilst still receiving legal aid. Table 22 shows 2,000 (including the above 200 who will move from ineligible to eligible) benefitting from the changes in the Crown Court test and around 3,000 being detrimentally impacted. Those who are negatively impacted are those who will be asked to pay a contribution towards the capital test when convicted.

118. For the impact analysis going forward the volume tables provide the number of cases where individuals will have some sort of eligibility change (either beneficial or detrimental) under Option 1, and not the change in total number of cases.

*Table 22: Number of individuals who see their eligibility change under Option 1 in the Crown Court (Baseline 2)*

	<b>Benefit</b>	<b>Detriment</b>
<b>Estimate volume</b>	2,000	3,000

119. Further detailed analysis can be found in Annex C.



# Assumptions, Risks and Sensitivity Analysis

120. The complexity of the eligibility models used to estimate the impacts of the Means Test Review means it would not be useful to document every assumption that underpins the modelling. Therefore, below we have captured the assumptions that have the greatest impact on the modelling outputs:

	<b>Assumption</b>	<b>Risk</b>
<b>Take-up rates</b>	<p>The probability of an individual previously ineligible for legal aid becoming eligible for legal aid as a result of the Option 1 changes is estimated by identifying similar individuals in the population who are currently eligible and replicating their take-up rate. This is done by identifying individuals of the same age and sex, but who have the highest disposable income levels in the currently eligible population.</p> <p>Our data suggests that for criminal (and civil) legal aid, the age, sex and income of individuals are important characteristics to estimate how likely people are to take up legal aid.</p> <p>Case study: Consider an individual who is male, 30-40, and was previously ineligible for legal aid through the income test but under Option 1 will be entitled to legal aid. To consider how likely this individual will be to require magistrates' court legal aid, we will look at the individuals who are male, 30-40 and are currently eligible for legal aid. Using the existing legal aid data and the population data we can then estimate the rate at which these individuals are likely to require (and take up) legally aided magistrates' representation</p>	<p>There are risks that changing the means test rules will have behavioural impacts that are not captured in the analysis.</p>
	<p>Take up rate adjustments are applied if somebody moves from contributory legal aid to non-contributory, or vice-versa. This is to try and capture the behavioural impacts of the disincentive of being required to pay a contribution.</p> <p>Adults in the household are grouped by their age, sex, income, and capital eligibility status. This information is then used to match households to take up rates from real legal aid data (as has been detailed already). The following adjustment is then made:</p>	<p>There are risks that changing the means test may have behavioural impacts that are not captured in the analysis. For example, the new means test makes a more accurate assessment of people's ability to pay towards their contributions, and this may incentivise more people who are eligible to contributory legal aid to take it up</p>

	Any individual who is ineligible for legal aid under the old/base world and has moved to eligibility for legal aid under the new Means Test scenario, is matched to a TUR of those who were Contributory – Band C in real Legal Aid data.	
<b>Case costs and duration</b>	The models are disaggregated to magistrates' court cases and high, medium and low cost cases in the Crown Court. For each of these, the models use average cost and duration assumptions, which are critical for estimating contribution impacts. In reality these costs and durations follow particular distributional trends.	There is a risk that the case costs and durations do not capture the nuances as the modelling does not have the capability of applying the impacts of distributional trends of case costs and durations.
<b>Data limitations</b>	The model baseline is fixed to LAA volume forecasts from 18/19. This was applied to try and strip out the impacts of passporting everybody on Universal Credit, but also the impacts of more recent COVID-19 caseload impacts.	Our data on the financial circumstances of households in the population was based on survey data derived before Covid-19. The impacts of Covid-19 on the economy have added great uncertainty on the future circumstances for households in the population, and there is a risk that our data could no longer reflect reality.
<b>Family Resource Survey</b>	The Family Resources Survey (FRS) is a continuous household survey which collects information on a representative sample of private households in the United Kingdom. It is therefore assumed that the sampling is representative of the England and Wales population.	We recognise that the data is based on the population from a number of years ago (2017/18). This is because DWP need a significant amount of time to recalibrate the survey data to actual benefit income and to implement their forecasts on future policy (such as Universal Credit). We then use this data to feed into our models which are highly complex and takes time to analyse, we are therefore operating on a lag with respect to the time period of the data underpinning the analysis. However, the financial data in the models are updated to the price year 22/23 and we do not think the annual population changes will be significant (although COVID-19 impacts on households might be considerable – but we wouldn't be able to use reliable up to date data on this at this point).

# Sensitivity Analysis

121. We have identified above that one of the key assumptions of the modelling is how we estimate how many of those who are currently ineligible for legal aid will take it up if they become eligible. Our sensitivity analysis revolves around the uncertainty of this assumption.
122. To illustrate how this assumption may affect the impacts of the outputs of the model, we have chosen to estimate the cost impacts under the assumption that our current estimate has a margin error of 20%. Therefore, in the first sensitivity analysis scenario we have uprated the take up rates for those that become newly eligible for legal aid under Option 1, by 20%, and for the second scenario we have downrated the same cohort's take up rate by 20%. It should be noted that this will not affect off-model estimates, as covered in Annex B.

*Table 23: A summary of the Option 1 costs under sensitivity scenario 1 & 2*

<b>Scenario</b>	<b>Total Cost</b>
<b>Scenario 1 - 20% uprate</b>	+ £2m
<b>Scenario 2 - 20% downrate</b>	- £2m

123. Table 23 shows that there will be a £2m swing in the estimated cost when the take up rate gets adjusted by +/- 20%. This range should not be used as a potential upper and lower bound of the impacts because there are many other assumptions that will need to be considered, let alone the uncertainties around with the off-model analytical methodology/assumptions too.

# Wider impacts

## Equalities

124. Analysis on the impacts on protected characteristics can be found in Annexes B and C and are explored in more detail in the Equality Assessment for the Means Test Review which has been published alongside this IA.

## Regulatory Impacts

125. There are no wider impacts on regulation.

## International Trade Impacts

126. There will be no impacts of international trade as a result of our Option 1.

## Monitoring and Evaluation

127. We will monitor the impact of the new means test using published data on volumes of legal aid cases and spending on legal aid. We will assess whether the objectives have been met through regular engagement with stakeholders to get feedback on the impact of the policies. We will also continue to model the proportion of the population who are eligible for legal aid.

128. Post implementation, we are planning to review the income and capital thresholds for legal aid, with the first review within 3-5 years of the new means test coming into operation. That is, the first review will be published no earlier than 3 years and no later than 5 years after the new means test is implemented.

# Annex A: Estimating Administrative Impact on Legal Providers

129. As explained in paragraphs 61-62, under Option 1 there will be additional administrative cost to providers due to a) the need to process additional number of means test applications, and b) the additional complexity of applications due to the need to require further evidential requirements or the change in the nature of applications (i.e. passported vs non-passported).
130. In particular, some additional deductions are planned for the full means test which may require extra work for providers, such as calculating the appropriate deductions for pension contributions, student loans and priority debts etc. This will affect those applications that require a full disposable income assessment. In addition, under Option 1, an increased number of people will need to be assessed on their capital in the Crown Court if convicted, because of the changes to the capital passporting policy.
131. We provide an illustration below concerning how much Option 1 may cost crime providers from an administrative perspective, but the assumptions are based on very limited data. Consultee feedback was sought on this area through two specific questions in the consultation paper. The majority of responses shared the view that provider administrative burdens would likely stay broadly the same or be increased in some areas. It was acknowledged by consultees that some specific proposals may help to reduce the administrative burdens in certain areas, such as the proposal to remove the means test for applicants for criminal advice and assistance and advocacy assistance who are under 18 years old.

## Assumptions used:

### (1) Time taken for applications

	Magistrates'	Crown
<b>Time of means-tested applications (mins)</b>	60	60
<b>Additional complexity (mins)</b>	5	10

### (2) Administrative cost per hour

Hourly cost of admin staff = £29.02\*

\*derived from the Annual Survey of Hours and Earnings 2022, median earnings of employees in a professional occupation, and applying a 30% uplift for overheads.

### (3) Volume impacts:

	Magistrates'	Crown
<b>Current means-tested applications</b>	180,000	80,000
<b>Change in means-tested applications</b>	17,000	200

132. The impacts on advocacy assistance and advice and assistance have not been accounted for due to the assumption that the volume impact will be low.
133. Based on the assumptions and volume impacts above, we can derive a calculation which estimates the provider costs across England and Wales may amount to around £1.4m per year. The calculations can be illustrated in the table below:

Calculations:

	<b>Magistrates</b>	<b>Crown</b>
<b>Change of means-testing time (mins)</b>	1,100,000	14,000
<b>Increase in complexity of means-tested applications</b>	900,000	800,000
<b>Time impact (mins)</b>	2,000,000	815,000
<b>Time impacts (hours)</b>	34,000	14,000
<b>Cost impact (£)</b>	<b>£1m</b>	<b>£0.4m</b>

134. About 40% - 50% of the additional work in the magistrates' court will come from new representation orders, whereas nearly all of the additional work in the Crown Court will be amongst the already eligible applications. In the magistrates' court, only 5% of cases currently are paid using hourly rates, which will allow them to charge for the extra complexity. This will therefore mean that in the majority of cases the profit margins that providers receive for the work will decline, since their administrative costs will go up for the average application. In the Crown Court the evidence provision fee can be claimed for the provision of additional evidence to support an application for legal aid, and therefore providers will be able to charge the LAA for the extra administrative burden.

## Annex B: Supplementary Impact Analysis against Baseline 1

135. In accordance with our duties under section 149 of the Equalities Act 2010, an Equalities Assessment has been produced alongside this IA. The following analysis summarises the impact of Option 1 against on the financial eligibility of various protected characteristics. For more details see the accompanying Equalities Assessment.
136. The equalities analysis in this impact assessment captures the changes to the core magistrates' and Crown Court means tests. This includes nearly all the changes to the income, capital, contributions and passporting rules.
137. It does not capture the bespoke changes to advocacy assistance law, advice and assistance, sentencing and appeals means tests, which is covered in the Means Test Review Equalities Assessment.
138. It is not possible to estimate the equalities impacts of some components to the means test. These are explained in more detail below:
- **Priority Debt:** The Family Resources Survey (the basis for our modelling) does not have data on adults who hold priority debts. This means we cannot identify which types of individuals hold priority debts.
  - **Disregards for compensation, ex-gratia, damages payments and backdated benefits and backdated child maintenance:** Similarly, we cannot identify the circumstances of the individuals who will have some of their income or capital disregarded because of the new changes to scope for what is disregarded. In addition, some provisions include a future-proofing element in relation to potential new schemes making payments in relation to personal harm. Therefore, we cannot estimate the scope or size of any such payments.

### Impact on groups with protected characteristics

139. The tables below are based on the proportion of the England and Wales population expected to see their eligibility change. These are followed by tables concerning the volumes of individuals in magistrates and Crown Court cases expected to see their eligibility change.
140. Tables 24 and 26 show the impacts for ethnicity at a population level. In the magistrates' Court, at least 11% of ethnic minority individuals are estimated to benefit, compared to only 10% of white individuals who are expected to benefit. In the Crown Court, only at least 19% of ethnic minority individuals are set to benefit compared to 26% of white individuals.

*Table 24: Proportion of eligibility impacts by ethnicity in the magistrates' court, in the E&W population under Option 1 (Baseline 1)*

Ethnicity	Benefit	Detriment
White	10%	0%
Mixed	11%	0%
Asian	12%	0%
Black/African	18%	0%
Other	19%	0%

Table 25: Magistrates' court volumes for those who changed eligibility by ethnicity under Option 1 (Baseline 1)

Ethnicity	Benefit	Detriment
White	13,900	100
Mixed	200	-
Asian	1,300	-
Black/African	900	-
Other	500	-

Table 26: Proportion of eligibility impacts by ethnicity in the Crown Court, in the E&W population under Option 1 (Baseline 1)

Ethnicity	Benefit	Detriment
White	26%	2%
Mixed	23%	2%
Asian	19%	4%
Black/African	23%	1%
Other	28%	0%

Table 27: Crown Court volumes for those who changed eligibility outcome by ethnicity under Option 1 (Baseline 1)

Ethnicity	Benefit	Detriment
White	2,600	1,400
Mixed	-	100
Asian	200	400
Black/African	300	-
Other	100	-

141. Tables 28 to 31 show there is a negligible difference in the percentage of men and women who are estimated to benefit, with 11% and 25% of women and 10% and 26% of men in the population benefitting for the magistrates' and Crown Court tests, respectively. Nevertheless, the volumes tables (29 and 31) show that males will be more likely to benefit, since criminal legal aid clients are more likely to be male. This is also the case for those who will have a negative outcome since in the Crown Court 1,700 males will be expected to have a detrimental impact compared to only 300 females.

Table 28: Proportion of eligibility impacts by sex in the magistrates' court, in the E&W population under Option 1 (Baseline 1)

Sex	Benefit	Detriment
Male	10%	0%
Female	11%	0%

Table 29: Magistrates' court volumes for those who changed eligibility by sex under Option 1 (Baseline 1)

Sex	Benefit	Detriment
Male	10,000	-
Female	6,900	-



Table 30: Proportion of eligibility impacts by sex in the Crown Court, in the E&W population under Option 1 (Baseline 1)

Sex	Benefit	Detriment
Male	26%	1%
Female	25%	2%

Table 31: Crown Court volumes for those who changed eligibility outcome by sex under Option 1 (Baseline 1)

Sex	Benefit	Detriment
Male	2,800	1,700
Female	400	300

142. Similarly, we can look at the population impacts for those who are and are not disabled, using data derived from the Family Resources Survey recording of disability (The Equality Act 2010 defines a person as having a disability if they have a physical or mental impairment that has 'substantial' and 'long term' negative effects on their ability to do normal daily activities.)
143. Tables 32 and 34 shows that for Option 1, 9% & 15% of those who have a disability are estimated to benefit for the magistrates' court and Crown Court respectively. The proportion is similar for non-disabled people in the magistrates' court, but in the Crown Court a significantly larger proportion of non-disabled people will be likely to benefit from the policies.

Table 32: Proportion of eligibility impacts by disability status in the magistrates' court, in the E&W population under Option 1 (Baseline 1)

Disability	Benefit	Detriment
Yes	9%	0%
No	11%	0%

Table 33: Magistrates' court volumes for those who changed eligibility by disability status under Option 1 (Baseline 1)

Disability	Benefit	Detriment
Yes	2,400	-
No	14,600	-

Table 34: Proportion of eligibility impacts by disability status in the Crown Court, in the E&W population under Option 1 (Baseline 1)

Disability	Benefit	Detriment
Yes	15%	4%
No	30%	1%

*Table 35: Crown Court volumes for those who changed eligibility outcome by disability status under Option 1 (Baseline 1)*

<b>Disability</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Yes</b>	500	1,200
<b>No</b>	2,800	800

144. Looking at the age bands in the population, Option 1 is more likely to benefit adults who are aged 31-40 (16%); the changes to the magistrates' court test will also benefit those who are younger (15%). This proportion then tapers with age until the oldest group, those aged 60 and over, of whom only 6% will benefit. This tapering is likely to be driven by the proportion of each cohort that has below the median level of income, since older workers are more likely to be at their peak earnings than younger workers. For the Crown Court test, 31-59 years old benefit the most, and the older age groups are more likely to lose out. This is likely to be driven by a larger proportion of people who will be passported but own their own property (with over £30k equity).
145. As with the population percentages, Table 37 shows most of the individuals who will benefit at the magistrates' court come from those who are aged 18-50. In the Crown Court, the age cohort with the most individuals estimated to benefit are those aged 18-30 (1,300 projected to benefit per year), since the typical need for Crown Court legal aid is higher amongst younger people, and this tapers off as the age cohort increases. Those most likely to suffer a negative outcome are aged 41-50, presumably because this cohort are more likely to own a property and therefore be affected by the reversal of capital passporting for those income passported.

*Table 36: Proportion of eligibility impacts by age in the magistrates' court, in the E&W population under Option 1 (Baseline 1)*

<b>Age Band</b>	<b>Benefit</b>	<b>Detriment</b>
<b>18-30</b>	15%	0%
<b>31-40</b>	16%	0%
<b>41-50</b>	12%	0%
<b>51-59</b>	7%	0%
<b>60+</b>	6%	1%

*Table 37: Magistrates' court volumes for those who changed eligibility by age under Option 1 (Baseline 1)*

<b>Age Band</b>	<b>Benefit</b>	<b>Detriment</b>
<b>18-30</b>	6,500	-
<b>31-40</b>	4,200	-
<b>41-50</b>	4,700	-
<b>51-59</b>	1,100	-
<b>60+</b>	400	100

*Table 38: Proportion of eligibility impacts by age in the Crown Court, in the E&W population under Option 1 (Baseline 1)*

<b>Age Band</b>	<b>Benefit</b>	<b>Detriment</b>
<b>18-30</b>	18%	0%
<b>31-40</b>	34%	0%
<b>41-50</b>	32%	1%
<b>51-59</b>	33%	2%
<b>60+</b>	19%	4%

*Table 39: Crown Court volumes for those who changed eligibility outcome by age under Option 1 (Baseline 1)*

<b>Age Band</b>	<b>Benefit</b>	<b>Detriment</b>
<b>18-30</b>	1,300	200
<b>31-40</b>	1,100	500
<b>41-50</b>	600	700
<b>51-59</b>	200	300
<b>60+</b>	100	300

### **Impact by Family Type**

146. Option 1 includes a number of policies which will affect families in different ways, most notably the substantial increase to the cost of living allowance which takes into account additional partners and dependents within the family. Below we assess the aggregated impact of Option 1 at a population level and at a legal aid volume level.
147. Table 40 shows that the type of family that will benefit (at a population level) the most from the magistrates' policies are those that have children. Of all families with children, at least 17% will benefit from the Option 1 policies (17% of couples with children and 30% of lone parents will benefit at the magistrates' Court). Table 41 shows the make-up of those benefitting in the Crown Court will be significantly different because these include very higher earners who were previously ineligible. Those with very high earnings who will benefit in this way are more likely to be in a couple, as 36% of couples with children and 39% of couples without children are to benefit.

*Table 40: Proportion of households that change eligibility in the magistrates' court in the E&W population by family type under Option 1 (Baseline 1)*

<b>Family Type</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Couple with children</b>	17%	0%
<b>Couple without children</b>	6%	0%
<b>Lone Parent</b>	30%	0%
<b>Single adult without children</b>	12%	0%
<b>Female pensioner single</b>	9%	0%
<b>Male pensioner single</b>	10%	0%
<b>Pensioner couple</b>	4%	1%

*Table 41: Proportion of households that change eligibility in the Crown Court in the E&W population by family type under Option 1 (Baseline 1)*

<b>Family Type</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Couple with children</b>	36%	1%
<b>Couple without children</b>	39%	1%
<b>Lone parent</b>	24%	1%
<b>Single adult without children</b>	10%	1%
<b>Female pensioner single</b>	4%	8%
<b>Male pensioner single</b>	9%	5%
<b>Pensioner couple</b>	24%	3%

148. Tables 42 and 43 show the volume impacts by family type, with the total volume equating to the number of individuals who see their eligibility change. These tables more accurately represent the clients who will apply for criminal legal aid because they take into account individuals' need for legal aid based on their age and sex. Again, the tables show a large estimated beneficial impact on couples with children in both the magistrates' and Crown Court tests (7,700 and 1,500 respectively).

149. Despite the large number of pensioners in the population estimated to have a negative impact through the Crown Court changes, only 100 pensioner couples and 100 male pensioners who are single will be detrimentally impacted by Option 1, compared to 700 couples with children and single adults without children. This is driven by the low likelihood of pensioners requiring legal aid.

*Table 42: Magistrates' court volumes for those who changed eligibility outcome by family type under Option 1 (Baseline 1)*

<b>Family Type</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Couple with children</b>	7,700	-
<b>Couple without children</b>	2,200	-
<b>Lone parent</b>	1,000	-
<b>Single adult without children</b>	5,700	-
<b>Female pensioner single</b>	-	-
<b>Male pensioner single</b>	100	-
<b>Pensioner couple</b>	200	100

*Table 43: Crown Court volumes for those who changed eligibility outcome by family type under Option 1 (Baseline 1)*

<b>Family Type</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Couple with children</b>	1,500	700
<b>Couple without children</b>	500	300
<b>Lone parent</b>	200	100
<b>Single adult without children</b>	1,000	700
<b>Female pensioner single</b>	-	-
<b>Male pensioner single</b>	-	100
<b>Pensioner couple</b>	-	100

## Impact by Housing Tenure

150. There will be a significant change to the Crown Court means test as shown in Option 1, that will directly change the way in which housing circumstances of applicants are considered. This is the policy that homeowners in receipt of passported benefits will no longer be passported through the capital test and may have to contribute financially to the cost of their case, if they are convicted.
151. Tables 44 & 45 show that the housing tenures that will benefit the most from the policy changes are different for the magistrates' and Crown Court tests. For the magistrates' test, renters will benefit the most (>15%), whereas for the Crown Court test, homeowners will benefit the most (>19%). However, homeowners will also be more likely to be detrimentally impacted in the Crown Court, due to the change in capital passporting rules.

*Table 44: Proportion of households that change eligibility in the magistrates' court in the E&W population by housing tenure under Option 1 (Baseline 1)*

Tenure	Benefit	Detriment
<b>Rented from Council</b>	17%	0%
<b>Rented from Housing Association</b>	18%	0%
<b>Rented privately unfurnished</b>	20%	0%
<b>Rented privately furnished</b>	15%	0%
<b>Owned outright</b>	4%	0%
<b>Owned with mortgage</b>	10%	0%

*Table 45: Proportion of households that change eligibility in the Crown Court in the E&W population by housing tenure under Option 1 (Baseline 1)*

Tenure	Benefit	Detriment
<b>Rented from Council</b>	15%	0%
<b>Rented from Housing Association</b>	14%	0%
<b>Rented privately unfurnished</b>	22%	0%
<b>Rented privately furnished</b>	15%	0%
<b>Owned outright</b>	19%	5%
<b>Owned with mortgage</b>	30%	1%

152. Tables 46 & 47 show the impacts at legal aid volume level for each of the different tenure types. In the magistrates' means test, renters will benefit more than homeowners, although there are a large number of homeowners with mortgages who will also benefit. In the Crown Court capital test, homeowners on UC will move from non-contributory to contributory legal aid, as evidenced in table 47.

Table 46: Magistrates' court volumes for those who changed eligibility outcome by tenure type under Option 1 (Baseline 1)

Tenure	Benefit	Detriment
Rented from Council	1,900	-
Rented from Housing Association	1,800	-
Rented privately unfurnished	4,900	-
Rented privately furnished	1,400	-
Owned outright	1,200	100
Owned with mortgage	5,600	-

Table 47: Crown Court volumes for those who changed eligibility outcome by tenure type under Option 1 (Baseline 1)

Tenure	Benefit	Detriment
Rented from Council	600	-
Rented from Housing Association	400	-
Rented privately unfurnished	1,200	-
Rented privately furnished	300	-
Owned outright	200	1,400
Owned with mortgage	500	600

### Impact by Household Income

153. Tables 48 and 49 below show how individuals will benefit depending on their household income grouping. Those who have household annual income greater than £10k will be the most likely in the population to benefit from Option 1. Conversely, those with an income below £10k will be very likely to already be eligible for non-contributory legal aid, and therefore have little scope to benefit. For the magistrates' test, as the income bands go up in value from £5k-£10k, the likelihood that the population will benefit tapers off, up to the highest banding (£50k+) where only 3% are expected to benefit.
154. A considerable number of high-income households will benefit from the removal of the £37,500 upper disposable income threshold in the Crown Court, at a population level (in table 49, 63% of those that benefit have household income of above £50k). Nevertheless, such individuals typically have a very low need for Crown Court legal aid (approximately only 200 people are deemed ineligible through the current Crown Court means test by having disposable income above £37,500). This can be seen in table 51 below, which shows the low volume of defendants with an income above £50k who will benefit.

Table 48: Proportion of eligibility impacts by household income in the magistrates' court, in the E&W population under Option 1 (Baseline 1)

Income Band	Benefit	Detriment
0-5k	0%	0%
5k-10k	0%	0%
10k-20k	17%	0%
20k-30k	18%	0%
30k-40k	16%	0%
40k-50k	10%	0%
50k+	3%	0%

Table 49: Proportion of eligibility impacts by household income in the Crown Court, in the E&W population under Option 1 (Baseline 1)

Income Band	Benefit	Detriment
0-5k	0%	0%
5k-10k	0%	6%
10k-20k	8%	6%
20k-30k	11%	2%
30k-40k	10%	1%
40k-50k	6%	0%
50k+	63%	0%

155. Tables 50 & 51 show the legal aid volume change impacts by household income band. Those in the middle-income ranges (£10k-£40k) will benefit the most from the new magistrates' and Crown Court means tests. In the Crown Court, individuals who will face a detrimental impact will be very likely to be those with incomes between £10k and £30k. This is due to the benefit recipients who will now be required to pay capital contributions.

Table 50: Magistrates' court volumes for those who changed eligibility outcome by household income under Option 1 (Baseline 1)

Income Band	Benefit	Detriment
0-5k	-	-
5k-10k	-	-
10k-20k	4,000	-
20k-30k	5,000	-
30k-40k	4,100	-
40k-50k	2,000	-
50k+	1,700	-

Table 51: Crown Court volumes for those who changed eligibility outcome by household income under Option 1 (Baseline 1)

Income Band	Benefit	Detriment
0-5k	-	-
5k-10k	-	200
10k-20k	800	1,100
20k-30k	1,000	700
30k-40k	900	100
40k-50k	300	-
50k+	300	-

## Annex C: Supplementary Impact Analysis against Baseline 2

156. In accordance with our duties under section 149 of the Equalities Act 2010, an Equalities Assessment has been produced alongside this IA. The following analysis summarises the impact of Option 1 against on the financial eligibility of various protected characteristics. For more details see the accompanying Equalities Assessment.
157. The equalities analysis in this impact assessment captures the changes to the core magistrates' and Crown Court means tests. This includes nearly all the changes to the income, capital, contributions and passporting rules.
158. It does not capture the bespoke changes to advocacy assistance law, advice and assistance, sentencing and appeals means tests, which is covered in the Means Test Review Equalities Assessment.
159. It is not possible to estimate the equalities impacts of some components to the means test. These are explained in more detail below:
- **Priority Debt:** The Family Resources Survey (the basis for our modelling) does not have data on adults who hold priority debts. This means we cannot identify which types of individuals hold priority debts.
  - **Disregards for compensation, ex-gratia, damages payments and backdated benefits and backdated child maintenance:** Similarly, we cannot identify the circumstances of the individuals who will have some of their income or capital disregarded because of the new changes to scope for what is disregarded. In addition, some provisions include a future-proofing element in relation to potential new schemes making payments in relation to personal harm. Therefore, we cannot estimate the scope or size of any such payments.

### Impact on groups with protected characteristics

160. The tables below use the proportion of the England and Wales population who will see their eligibility change. These are followed by tables concerning the volumes of individuals who will see their eligibility change.
161. Tables 52 and 54 show the impacts for ethnicity at a population level. In the magistrates' court, at least 13% of ethnic minority individuals are estimated to benefit, compared to 7% of white individuals who will be expected to benefit. In the Crown Court, 11% of ethnic minority individuals will benefit compared to 24% of white individuals.

*Table 52: Proportion of eligibility impacts by ethnicity in the magistrates' court under Option 1 (Baseline 2)*

<b>Ethnicity</b>	<b>Benefit</b>	<b>Detriment</b>
<b>White</b>	7%	0%
<b>Mixed</b>	8%	0%
<b>Asian</b>	7%	0%
<b>Black/African</b>	6%	0%
<b>Other</b>	13%	0%

*Table 53: Magistrates' court volumes for those who changed eligibility by ethnicity under Option 1 (Baseline 2)*



<b>Ethnicity</b>	<b>Benefit</b>	<b>Detriment</b>
<b>White</b>	9,400	100
<b>Mixed</b>	200	-
<b>Asian</b>	800	-
<b>Black/African</b>	200	-
<b>Other</b>	400	-

*Table 54: Proportion of eligibility impacts by ethnicity in the Crown Court under Option 1 (Baseline 2)*

<b>Ethnicity</b>	<b>Benefit</b>	<b>Detriment</b>
<b>White</b>	24%	3%
<b>Mixed</b>	20%	4%
<b>Asian</b>	16%	12%
<b>Black/African</b>	11%	3%
<b>Other</b>	22%	2%

*Table 55: Crown Court volumes for those who changed eligibility outcome by ethnicity under Option 1 (Baseline 2)*

<b>Ethnicity</b>	<b>Benefit</b>	<b>Detriment</b>
<b>White</b>	1,600	1,800
<b>Mixed</b>	-	100
<b>Asian</b>	100	600
<b>Black/African</b>	100	100
<b>Other</b>	100	-

162. There will be marginal differences in the number of men and women estimated to benefit at a population level for both the magistrates' and Crown Court, but the volumes are very different due to the overrepresentation of males in the criminal courts. 10,100 males will benefit in the magistrates' court compared to only 1,300 women (Table 57), and in the Crown Court 1,700 males will benefit while 2,200 will face a detrimental impact compared to only 200 females who will benefit with 400 having a detrimental impact (Table 59).

*Table 56: Proportion of eligibility impacts by sex in the magistrates' court under Option 1 (Baseline 2)*

<b>Sex</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Male</b>	8%	0%
<b>Female</b>	7%	0%

*Table 57: Magistrates' court volumes for those who changed eligibility by sex under Option 1 (Baseline 2)*

<b>Sex</b>	<b>Benefit</b>	<b>Detriment</b>
<b>Male</b>	10,100	-
<b>Female</b>	1,300	-

Table 58: Proportion of eligibility impacts by sex in the Crown Court under Option 1 (Baseline 2)

Sex	Benefit	Detriment
Male	24%	3%
Female	22%	5%

Table 59: Crown Court volumes for those who changed eligibility outcome by sex under Option 1 (Baseline 2)

Sex	Benefit	Detriment
Male	1,700	2,200
Female	200	400

163. Similarly, based on the Family Resources Survey recording of disability we can look at the population impacts for those who are and are not disabled.

164. Tables 60 and 62 show that with Option 1, 7% of those who have a disability are estimated to benefit compared to 8% for non-disabled in the magistrates', whereas only 14% will in the Crown Court (relative to 27% for non-disabled).

Table 60: Proportion of eligibility impacts by disability status in the magistrates' court under Option 1 (Baseline 2)

Disability	Benefit	Detriment
Yes	7%	0%
No	8%	0%

Table 61: Magistrates' court volumes for those who changed eligibility by disability status under Option 1 (Baseline 2)

Disability	Benefit	Detriment
Yes	1,600	-
No	9,800	-

Table 62: Proportion of eligibility impacts by disability status in the Crown Court under Option 1 (Baseline 2)

Disability	Benefit	Detriment
Yes	14%	6%
No	27%	3%

Table 63: Crown Court volumes for those who changed eligibility outcome by disability status under Option 1 (Baseline 2)

Disability	Benefit	Detriment
Yes	300	1,300
No	1,600	1,300

165. Table 64 shows that Option 1 for the magistrates' test will be more likely to benefit adults who are aged 18-30 (11%), at a population level. This proportion then tapers with age until the oldest group, the 60 and overs, of whom only 7% will benefit. This tapering is likely to be driven by the proportion of each cohort that has below the median level of income, since older workers are more likely to be at their peak earnings than younger workers. For the Crown Court test, 31–59-year-olds will benefit the most. This is likely to be driven by a larger proportion of people who are passported but own their own property (with over £30k equity).
166. As with the population percentages, the largest group of individuals who will benefit from the magistrates' policies are those aged between 18-30 (a total of 5,100 individuals, shown in Table 65). In the Crown Court, the age cohort with the most individuals estimated to benefit will be those aged 18-30 too (800) – since the typical need for Crown Court legal aid is higher amongst younger people, and this tapers off as the age cohort increases (Table 67).
167. This is not the same findings for those with a negative outcome though, as the largest age cohort here are those who are 41-50 years old (1,000), presumably because this cohort are more likely to own a property and therefore to be affected by the reversal of capital passporting for those who are income passported.

*Table 64: Proportion of eligibility impacts by age in the magistrates' court under Option 1 (Baseline 2)*

Age Band	Benefit	Detriment
18-30	11%	0%
31-40	7%	0%
41-50	6%	0%
51-59	6%	0%
60+	7%	1%

*Table 65: Magistrates' court volumes for those who changed eligibility by age under Option 1 (Baseline 2)*

Age Band	Benefit	Detriment
18-30	5,100	-
31-40	2,000	-
41-50	2,900	-
51-59	900	-
60+	500	100

*Table 66: Proportion of eligibility impacts by age in the Crown Court under Option 1 (Baseline 2)*

Age Band	Benefit	Detriment
18-30	14%	1%
31-40	26%	4%
41-50	28%	7%
51-59	32%	4%
60+	20%	4%

Table 67: Crown Court volumes for those who changed eligibility outcome by age under Option 1 (Baseline 2)

Age Band	Benefit	Detriment
18-30	800	200
31-40	400	700
41-50	300	1,000
51-59	200	400
60+	200	300

### Impact by Family Type

168. Table 68 & 69 shows that the type of family that will benefit the most from the magistrates' test changes are those that are single adults without children (11%) or single pensioners (12%). Nevertheless, because pensioners are not in high need of magistrates' court legal representation, single adults with children are estimated to benefit the most with 5,200 additional cases, with the next highest group being couples with children with 3,600 (see table 70).

169. In the Crown Court, at the population level, couples without children are shown to benefit the most (38%), while lone parents will lose out the most (11%). However, the Crown volumes table (Table 71) shows that couples with children are set to lose out significantly too, (1,300) since they are highly prevalent amongst the cohort of individuals on UC who own a property.

Table 68: Proportion of households that change eligibility in the magistrates' court in the E&W population by family type under Option 1 (Baseline 2)

Family Type	Benefit	Detriment
Couple with children	8%	0%
Couple without children	5%	0%
Lone parent	2%	0%
Single adult without children	11%	0%
Female pensioner single	12%	0%
Male pensioner single	12%	0%
Pensioner couple	5%	1%

Table 69: Proportion of households that change eligibility in the Crown Court in the E&W population by family type under Option 1 (Baseline 2)

Family Type	Benefit	Detriment
Couple with children	29%	7%
Couple without children	38%	1%
Lone parent	2%	11%
Single adult without children	9%	1%
Female pensioner single	7%	8%
Male pensioner single	11%	5%
Pensioner couple	25%	3%

Table 70: Magistrates' court volumes for those who changed eligibility outcome, by family type under Option 1 (Baseline 2)

Family Type	Benefit	Detriment
Couple with children	3,600	-
Couple without children	2,000	-
Lone parent	100	-
Single adult without children	5,200	-
Female pensioner single	100	-
Male pensioner single	200	-
Pensioner couple	200	100

Table 71: Crown volumes for those who changed eligibility outcome, by family type under Option 1 (Baseline 2)

Family Type	Benefit	Detriment
Couple with children	500	1,300
Couple without children	400	300
Lone parent	-	100
Single adult without children	800	700
Female pensioner single	-	-
Male pensioner single	100	100
Pensioner couple	100	100

## Impact by Household Tenure

170. Tables 72 and 73 show that for the magistrates' test, renters will benefit the most (with each different cohort benefitting 13%), whilst 4% homeowners who own outright benefit and 8% of those who own with a mortgage will also benefit. For the Crown Court test, homeowners will be more likely to lose out. This is due to the Capital passporting changes for the Crown Court test.
171. Tables 74 and 75 show the impacts at a case level. Renters (aggregated) will be the largest group of individuals who will benefit in magistrates' test with 5,900 estimated to benefit, and additionally they are the largest group who will benefit in the Crown Court with 1,400 individuals. As would be expected, the largest groups with a detrimental impact will be those who own their property, with 1,600 who own their property outright and 1,100 who own their property with a mortgage affected by the capital passporting rules.

Table 72: Proportion of households that change eligibility in the magistrates' court in the E&W population by housing tenure under Option 1 (Baseline 2)

Tenure	Benefit	Detriment
Rented from Council	12%	0%
Rented from Housing Association	13%	0%
Rented privately unfurnished	13%	0%
Rented privately furnished	13%	0%
Owned outright	4%	0%
Owned with mortgage	8%	0%

Table 73: Proportion of households that change eligibility in the Crown Court in the E&W population by housing tenure under Option 1 (Baseline 2)

Tenure	Benefit	Detriment
Rented from Council	9%	0%
Rented from Housing Association	8%	0%
Rented privately unfurnished	14%	0%
Rented privately furnished	13%	0%
Owned outright	19%	7%
Owned with mortgage	29%	6%

Table 74: Magistrates' court volumes for those who changed eligibility outcome by housing tenure under Option 1 (Baseline 2)

Tenure	Benefit	Detriment
Rented from Council	600	-
Rented from Housing Association	1,000	-
Rented privately unfurnished	3,100	-
Rented privately furnished	1,200	-
Owned outright	1,000	100
Owned with mortgage	4,600	-

Table 75: Crown Court volumes for those who changed eligibility outcome by housing tenure under Option 1 (Baseline 2)

Tenure	Benefit	Detriment
Rented from Council	200	-
Rented from Housing Association	200	-
Rented privately unfurnished	700	-
Rented privately furnished	300	-
Owned outright	200	1,600
Owned with mortgage	400	1,100

## Impact by Household Income

172. Tables 76 and 77 below shows how individuals benefit depending on their household income grouping in the population. Most notably, those who have household annual income greater than £10k will be the most likely in the population to benefit from Option 1. This is because those with the lowest annual income (<£10k) are already very likely to pass the magistrates' and Crown Court tests, meaning there is little room for them to benefit further.
173. For the magistrates' test, as the income bands go up in value from £10k-£20k, the likelihood that the population will benefit tapers off, up to the highest banding (£50k+) where only 2% are expected to benefit.
174. The Crown Court table shows those with household incomes between £5k and £20k will be the most likely to be negatively impacted, because this cohort are more likely to be on UC and therefore be affected by capital passporting changes. This is also reflected in the volumes table (Table 80), although those with income between £20k-£30k are also shown as having one of the largest detrimental impacts too.

Table 76: Population eligibility impacts by household income in the magistrates' court under Option 1 (Baseline 2)

Income Band	Benefit	Detriment
0-5k	0%	0%
5k-10k	0%	0%
10k-20k	17%	0%
20k-30k	12%	0%
30k-40k	8%	0%
40k-50k	5%	0%
50k+	2%	0%

Table 77: Population eligibility impacts by household income in the Crown Court under Option 1 (Baseline 2)

Income Band	Benefit	Detriment
0-5k	0%	1%
5k-10k	0%	7%
10k-20k	7%	8%
20k-30k	5%	6%
30k-40k	3%	4%
40k-50k	1%	1%
50k+	62%	0%

Table 78: Magistrates' court volumes for those who changed eligibility outcome by household income under Option 1 (Baseline 2)

Income Band	Benefit	Detriment
0-5k	-	-
5k-10k	-	-
10k-20k	3,600	-
20k-30k	3,500	-
30k-40k	2,200	-
40k-50k	1,000	-
50k+	1,100	-

Table 79: Crown Court volumes for those who changed eligibility outcome by household income under Option 1 (Baseline 2)

Income Band	Benefit	Detriment
0-5k	-	-
5k-10k	-	200
10k-20k	600	1,200
20k-30k	600	1,000
30k-40k	300	200
40k-50k	100	-
50k+	300	-