

Equality Statement for the Victims and Courts Bill: Courts Measures

1. This Equality Statement considers the impacts of the courts related measures within the wider Victims and Courts Bill against the statutory obligations under Section 149 of the Equality Act 2010 (the Act) that require Ministers and the department, when exercising their functions, to pay 'due regard' to the need to:
 - a. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Act;
 - b. Advance equality of opportunity between those who share protected characteristics and those who do not; and
 - c. Foster good relations between those who share protected characteristics and those who do not.

2. The protected characteristics are race, sex, disability, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. The protected characteristic of marriage and civil partnership is relevant only when considering the first limb of the duty.

3. There is a separate Equality Statement covering the victims measures. The measures included in this statement are:
 - Order serious offenders to attend their sentencing hearing
 - Enable more legal professionals to be Crown Court Prosecutors
 - Set private prosecution rates
 - Amend magistrates' courts sentencing powers
 - Amend unduly lenient sentencing scheme

Order offenders to attend their sentencing hearing

Introduction

4. An offender's refusal to attend court, or their disruptive behaviour during proceedings, can cause victims and their families significant further distress. In these circumstances, it can be seen as denying the victim, their family and the wider public the opportunity to see the full administration of justice, and allowing the offender to avoid having to listen to victims' personal statements and the judge's remarks, meaning they fail to confront the consequences of their crime.
5. To address this, and to act as a deterrent, the Bill will set out express statutory powers for judges in the Crown Court to order offenders to attend their sentencing hearings and punish them for contempt if they refuse to do so without reasonable excuse. Alongside this, the measure will make it clear that prison officers and prisoner escort officers may use reasonable force to deliver an adult offender to the courtroom for their sentencing hearing where it is necessary and proportionate to do so, to ensure they hear society's condemnation and the impact of their crimes on their victims.

Policy summary and Evidence and analysis – context

6. There have been a number of cases in recent years where serious offenders have refused to attend their sentencing hearing. This refusal to attend can cause anger and upset for victims and their families who see it as a "final insult".
7. The Government is creating an express statutory power in the Crown Court to order the attendance of offenders for their sentencing hearings. Any adult offender who breaches this attendance order by refusing to attend without a reasonable excuse, or by disrupting the hearing so that they have to be removed from the courtroom, will face an additional penalty of up to 2 years imprisonment. A child offender will receive a fine. These penalties reflect existing sanctions for contempt of court. In addition, powers to impose prison sanctions for non-attendance at sentencing hearings will be made available as a punishment for offenders aged 18 or over in a prison or a young adult Young Offender Institution.
8. The measure will also make it clear authorities may use reasonable force to ensure attendance, where it is necessary and proportionate to do so. However, the decision on whether to use reasonable force remains that of the relevant trained prison staff. Offenders under the age of 18 are excluded from these provisions.
9. These measures will send a clear message to offenders that they must attend the sentencing hearing where the court requires them to do so, and that there will be consequences if they refuse.

Equality Considerations

Direct discrimination

10. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that the attendance at sentencing hearings measures are not directly discriminatory within the meaning of the Equality Act. They do not treat people less favourably because of their protected characteristics and they apply in the same way to all individuals who are in scope, regardless of their protected characteristics.
11. Application of the proposed change will be at judicial discretion on a case-by-case basis and will apply equally to all offenders regardless of their protected characteristics. We therefore do not consider that the proposal would result in people being treated less favourably directly because they possess any particular protected characteristics.

Age

12. The measure ordering offenders to attend their sentencing hearings will apply to all offenders due to be sentenced in the Crown Court.
13. Child offenders will be subject to a fine rather than imprisonment, in line with existing sanctions for contempt of court. The Bill does not apply prison sanctions to children. The measure providing for the potential use of force will not apply to children at all. To do so would be at odds with current policy on using force on children, itself informed by the UK commitments to the UN Convention on the Rights of the Child (UNCRC) and operationally, by the Taylor Review (2020).

Indirect discrimination

14. Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a protected characteristic at a particular disadvantage compared to those who do not share that characteristic.

Sex

15. The provisions of punishing offenders for non-attendance apply to all offenders awaiting sentence in the Crown Court. Men are more likely to be convicted of crime, and therefore the measure has potential to particularly disadvantage them. We believe any disadvantage arising from this measure is justified on the basis that the measure is a proportionate means of achieving the legitimate aim of securing an offender's attendance at their sentencing hearings. Judges will have discretion regarding whether to order attendance.

Race

16. Adults and children from some black and minority ethnic backgrounds are over-represented in the criminal justice system and in the prison estate. In 2022, 25% of those sentenced at the Crown Court were from an ethnic minority background

(where ethnicity was stated/recorded¹). There is a risk that the provisions punishing offenders for non-attendance may disproportionately impact individuals from black and minority ethnic backgrounds.

17. There is also evidence that some black and minority ethnic communities and individuals have lower levels of trust in the criminal justice system, and this can impact on their engagement with the system.
18. Although the principles for punishing contempt of court and maximum penalties apply equally to all offenders, there is a risk that the overrepresentation of offenders from black and minority ethnic backgrounds could result in more individuals from such backgrounds receiving longer punishments for contempt of court under these provisions. However, we believe that the measure is a proportionate means of achieving the legitimate aim of securing an offender's attendance at their sentencing hearings.
19. Even if the provisions enabling the use of force to ensure an offender attends their sentencing are applied proportionately to those in scope of the measure, there is a risk that they may have a different impact on individuals from black and minority ethnic backgrounds. As outlined above, adults and children from some black and minority ethnic backgrounds are over-represented in the prison estate. There is also evidence to suggest that use of force by prison staff is used disproportionately against prisoners with black and minority ethnic backgrounds.
20. HMPPS Use of Force training aims to tackle bias in decision making and will continue to examine and, where necessary, improve a range of decision-making processes, by applying evidence-based strategies for reducing the potential impact of bias.
21. This provision will likely increase the use of force on prisoners in order to respond to attendance orders from courts. There is therefore a risk that, due to over-representation in prisons, black and ethnic minority prisoners will be disproportionately impacted. However, any decision to use such force under these provisions would have to be assessed and authorised by trained prison staff or Prisoner Escort and Custody Services who would need to determine on a case-by-case basis whether it is reasonable and proportionate - and therefore lawful – in the circumstances to use force for the purposes of securing an offenders presence at their sentencing hearing, regardless of that individual's protected characteristics.

¹ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

Discrimination arising from disability and duty to make reasonable adjustments

22. In terms of disability, evidence to the UK parliament indicates that people with learning difficulties, learning disabilities and autism are over-represented in the prison estate. The Prison Reform Trust² estimated that up to 30% of prisoners have a disability or are neurodivergent. This is also true of individuals with diagnosed mental health issues – including depression and schizophrenia.³ Individuals with mental health and/or learning difficulties and/or autism may find that their court experience is more stressful, harder to understand and exacerbates health issues. This may lead to stress avoidant behaviour and (particularly among adults) may heighten the risk of non-attendance. Some of the behaviours associated with this stress may not be obvious or visible to others.
23. It is likely that, without sufficient assessment and safeguards, individuals with mental health and learning difficulties and those who are neurodivergent may be impacted differently by the provisions punishing offenders for non-attendance at their sentencing hearing and enabling the use of force to bring offenders to court.
24. Judges will have the discretion to decide whether it is appropriate to order an offender to attend in such cases having taken into account all the circumstances of the case and any health and communication assessments by professionals, or whether it might be possible for an offender to attend court with additional support measures such as video links or support from an intermediary.
25. People with mental health and/or learning difficulties may be more likely to be subject to the use of force to secure their attendance at their sentencing hearing and the type of force used may be greater due to the risk that the individual presents. However, use of force is a case-by-case decision for operational staff taking into account the circumstances of the individual involved. Force will only be used subject to a risk assessment by the suitability to use force for the purpose of producing an offender at their sentencing hearing.

Advancing Equality of Opportunity

26. We do not believe that this express statutory power specifically advances the equality of opportunity for people with protected characteristics, but the creation of this power aims to send a clear message to offenders that they must attend the sentencing hearing.

² https://prisonreformtrust.org.uk/wp-content/uploads/2023/06/prison_the_facts_2023.pdf

³ <https://www.justiceinspectorates.gov.uk/cjji/inspections/neurodiversity-in-the-criminal-justice-system-a-review-of-evidence/>

Harassment and victimisation

27. We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of this measure.

Fostering good relations

28. We do not consider that these measures would have any significant impact on the achievement of this objective.

Enable more legal professionals to become Crown Prosecutors

Introduction

29. This measure will enable a broader range of legal professionals to become Crown Prosecutors, increasing flexibility in CPS recruitment.

Policy summary

30. This measure will amend Sections 1(3) and 5(1) of the Prosecution of Offences Act 1985 to remove the requirement for Crown Prosecutors, and those who conduct prosecutions on behalf of the CPS, to hold a “general qualification”, as defined in the Courts and Legal Services Act 1990. This change will allow the Director of Public Prosecutions (DPP) greater flexibility in appointing suitably qualified individuals as Crown Prosecutors, including CILEX practitioners, thereby broadening and diversifying the recruitment pool.

Evidence and analysis – context

31. This measure will provide the CPS with greater flexibility in recruitment, broadening the pool of potential Crown Prosecutors (CP’s) by enabling consideration of candidates from more varied backgrounds, including those who qualify through non-traditional qualification routes (such as CILEX practitioners).
32. By removing an unnecessary legislative barrier, this measure will promote greater equality of opportunity for legal professionals from diverse educational and socio-economic backgrounds.
33. The CILEX route introduces a greater representation of groups with protected characteristics who are currently less represented in the legal profession. For example, CILEX members have a higher proportion of female practitioners and those from lower socio-economic backgrounds when compared to the wider solicitor profession. This suggests that opening up Crown Prosecutor roles to CILEX practitioners may contribute positively to increasing diversity levels amongst the pool of prospective CP’s in the future.
34. CILEX members also tend to have more varied socio-economic backgrounds when compared to the general solicitor/barrister profession. For example, 24% of CILEX members come from lower socio-economic backgrounds, while only 18% of solicitors at SRA-regulated firms do. Additionally, only 6% of CILEX members attended fee-paying schools compared to 19% of solicitors at SRA-regulated firms and 19.4% of barristers at BSB-regulated firms. Thus, this measure may support those from lower socio-economic backgrounds (who may have also faced financial or structural barriers to entering the profession via traditional solicitor or barrister routes) in accessing CP roles in the future.

Equality Considerations

Direct discrimination

35. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The revised policy will apply in the same way to all, whatever their protected characteristics. As a result, this measure does not involve direct discrimination within the meaning of the Equality Act (EA) because it does not treat people unfavourably due to their protected characteristics.

Indirect discrimination

36. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. Women make up 77% of CILEX members and therefore may benefit more from this opportunity than men. However, we do not consider that measure will result in indirect discrimination as it is open to all CILEX members who qualify. Our initial assessment is that the revised policy is not indirectly discriminatory within the meaning of the EA as explained below.

Age

37. There appears to be little difference in the age profiles of CILEX members and SRA-regulated solicitors. For example, 2021 data from CILEX Regulation and the SRA indicates that the largest age category for both groups is 25-34, representing 29.6% of CILEX members and 29% of SRA-regulated solicitors. We do not anticipate that the measure is likely to have a disproportionate impact based on age.

Sex

38. Women make up 53% of solicitors in SRA-regulated firms, 39.2% of barristers in BSB-regulated firms, and 77% of members in CILEX-regulated firms. Additionally, 64% of CILEX criminal practitioners are female. This suggests this measure may have a positive impact on increasing the representation of women amongst the pool of prospective CP's in the future.

Race

39. CILEX criminal practitioners include a slightly higher proportion of ethnic minority lawyers (17%) compared to the general solicitor population (16%), meaning this measure may also enhance racial diversity amongst the pool of prospective CP's in the future.

Advancing equality of opportunity

40. We have had regard to this aspect of the equality duty but do not consider that the measure would impact on the advancement of equality opportunity.

Discrimination arising from disability and duty to make reasonable adjustments

41. 12% of CILEX criminal practitioners have been identified as having a disability, with 3% reporting that their disability limits them significantly in daily activities and 9% reporting a minor impact. In comparison, 6% of solicitors at SRA-regulated firms have a disability with 5% reporting that it limits their daily activities. We do not consider that the changes will result in any discrimination against anyone living with a disability. It remains important to make reasonable adjustments for crown prosecutors with disabilities during the application process and when in post, as per our existing reasonable adjustments policy. The CPS will continue to make reasonable adjustments for applicants and staff with disabilities.

Harassment and victimisation

42. No impact is expected in terms of harassment or victimisation.

Fostering good relations

43. Consideration has been given to the need to foster good relations between people who share a relevant protected characteristic and people who do not share it. This consideration is unlikely to be of particular relevance to the revised policy.

Set private prosecution rates

Introduction

44. The purpose of this measure is to amend the Prosecution of Offences Act 1985 (POA) to provide a power for the Lord Chancellor to set, via Regulations, rates at which prosecutors acting in private prosecutions can recover from Central Funds expenses properly incurred by them in relation to the proceedings.

Policy summary

45. The magistrates' court sees thousands of private prosecutions annually, mostly for regulatory offences. The volume in the Crown Court is far lower. A small proportion of private prosecutions result in a claim by the private prosecutor for payment of their expenses from Central Funds. The Court can fix the amount to be paid under the Costs Order, but where it does not, it falls to the Legal Aid Agency's (LAA) Criminal Cases Unit (CCU) to assess claims for private prosecutor expenses. Typically, bills received cover the expenses of an investigation, litigation, advocacy, and disbursements.
46. By matter of convention, when assessing private prosecutor claims, LAA officers employ Senior Courts Costs Office (SCCO) guideline solicitor hourly rates. These are intended to reflect civil market rates of pay and following increases in recent years, are now around five times higher than the equivalent criminal legal aid rates. They are also higher than Crown Prosecution Service (CPS) rates.
47. The only safeguard against excessive private prosecution expenses is the Court's (or LAA's) assessment of the reasonableness of the expenses incurred, an assessment open to challenge by way of an appeal to a Costs Judge (Crown Court cases) or Judicial Review (magistrates' court cases) if the prosecutor is not satisfied with the determination. Even with the SCCO guidelines, the lack of prescribed rates makes assessment of reasonableness a subjective and imprecise enterprise.
48. With increasing SCCO rates, the disparity between the amounts which may be paid to private prosecutors and legally aided defence lawyers in the same case becomes more evident. This measure seeks to take the first step in addressing this disparity, and to provide clarity by giving the power to set rates at which private prosecution expenses can be claimed.
49. This measure is an enabling power for the Lord Chancellor to set rates in Regulations. The Government would then need to consult on the levels of hourly rates and lay secondary legislation to bring them into force.

Evidence and analysis – context

50. Overall, the magistrates' court sees thousands of private prosecutions annually, mostly for regulatory offences, whilst the volume in the Crown Court is far lower (MoJ does not hold robust data on precise numbers). In most instances, these proceedings are funded privately by the complainant organisation or individual, with costs awarded against the defendant upon conviction (dependent on

means); indeed a private prosecutor cannot apply for a Costs Order from the court where the matter concerns a summary-only offence.

51. However, a small proportion of private prosecutions result in a claim from Central Funds. In 2023/24, private prosecution expenses for 79 cases at the magistrates' court, and 38 cases at the Crown Court were reimbursed from Central Funds. Evidence from court judgments suggests a complainant or prosecutor's (often one and the same individual) decision to bring private proceedings may be at times more strongly motivated by commercial considerations or as a means of exerting pressure to settle a financial dispute than by a desire to see justice done. Some such proceedings have been stayed on this basis as an abuse of process. The expenses recovered by private prosecutors under the current scheme are competitive relative to rates available for other private work, and significantly higher than the legal aid rates available to the defence in the same case. Further, full reimbursement is guaranteed regardless of the case outcome, unless the judge rules that proceedings have been improperly conducted (which is rare).
52. Of the private prosecution proceedings in which a prosecutor makes a claim for their expenses from Central Funds, the majority concern three broad types of offence: low-value fraud/shoplifting, low-value fraud, and fraud prosecuted by companies or high-net worth individuals. This measure therefore has a relatively small scope in the context of the overall non-police prosecutions landscape.
53. This measure seeks to provide greater clarity and consistency, as outlined above, as to the expenses which are recoverable in private prosecutions. By enabling the Lord Chancellor to set the rates, it will bring greater transparency, ensuring a fairer system. This may also mitigate incentives to bring prosecutions more for commercial interest than in the public interest.
54. There is limited publicly available information on the characteristics of those who are pursuing private prosecutions, or of private prosecution firms. As this measure is an enabling power rather than one setting the rates themselves at this point, limited analysis can be undertaken at this time. At the point of setting the rates, careful consideration will be given to the impact of this on protected characteristics, and a full Equalities Statement will be published alongside the relevant Regulations.

Equality Considerations

Direct discrimination

55. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this measure is not directly discriminatory within the meaning of the Act. We do not consider that this measure would result in people being treated less favourably because of any protected characteristic.

Indirect discrimination

56. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. We assess this measure as not indirectly discriminatory within the meaning of the Act.

57. As outlined in the policy summary, this measure is solely an enabling power and does not introduce the rates for private prosecutions. As such, there is no impact at this stage on private prosecutor providers, those pursuing private prosecutions, or those being prosecuted through a private prosecution. Rates will be set following a public consultation. At the point the rates for expenses recoverable are set, the impact of these new rates will be carefully considered, and a full Equalities Statement will be published alongside the relevant Regulations.

Advancing equality of opportunity

58. We do not believe at this time that this measure specifically advances the equality of opportunity for people with protected characteristics. At the point of setting the rates, this will be considered further.

Discrimination arising from disability and duty to make reasonable adjustments

59. As this measure is solely an enabling power, at this stage, we do not believe that this measure will result in any discrimination in relation to prosecutors or defendants involved in private prosecutions.

Amend the Unduly Lenient Sentencing Scheme

Introduction

60. This measure will amend the time limit, in paragraph 1 of Schedule 3 to the Criminal Justice Act 1988, in a way which guarantees that the Attorney General and Solicitor General have at least 14 days to consider a sentence once a request to review the sentence is received.

Policy summary

61. There is currently a time limit of 28 days from the date of sentence for the Attorney General to apply to the Court of Appeal for leave to refer a case. This is a strict time limit with no possibility of extension: the reason for the time limit is that it is important that there is finality in sentencing, for both offenders and victims.

62. Whilst the reasoning behind the time limit is right, the 28-day time limit can create practical issues, as potential unduly lenient sentences are often only brought to the Law Officers' attention close to expiry of the time limit. These problems have become more acute as the number of requests received to refer sentences to the Court of Appeal has greatly increased in recent years.

Evidence and analysis – context

63. There is currently a time limit of 28 days from the date of sentence for the Attorney General to apply to the Court of Appeal for leave to refer a sentence. This is a strict time limit to ensure there is finality in sentencing for both offenders and victims, and Parliament intended this to be an exceptional power. Although the rationale for the time limit is valid, the 28-day period can create practical issues, as potential unduly lenient sentences are often brought to the Attorney General's attention close to expiry of the 28-day time limit.

64. In particular, the AGO relies on the Crown Prosecution Service (CPS) to provide the relevant case papers and often seeks the advice of Treasury Counsel, both of which take time. Completing these steps in time can lead to advice needing to be given and decisions taken at very high speed.

65. These practical issues have been exacerbated in recent years, as the number of requests received by the AGO, including those received closer to the 28-day time limit, to review a sentence has greatly increased. For example, in 2024, of the 831 sentences considered by the AGO, 108 were received on days 15-28.

66. This has resulted in an unsatisfactory and unsustainable situation for the operation of the ULS scheme. This change will increase the time the AGO has to consider cases received at this point and so allow the scheme to run more sustainably.

67. Our assessment is that this provision is not directly discriminatory within the meaning of the Equality Act 2010. They do not treat people less favourably because of their protected characteristics and they apply in the same way to all individuals who are in scope, regardless of their protected characteristics.

Equality Considerations

Direct discrimination

68. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. We assess this measure to extend the AGO's time limit is not directly discriminatory within the meaning of the Equality Act.
69. This is an administrative measure which gives the AGO an additional 14 days to consider whether to refer a sentence to the Court of Appeal on the grounds that it appears unduly lenient. This measure does not treat people less favourably because of their protected characteristics and they apply in the same way to all individuals who are in scope, regardless of their protected characteristics.

Indirect discrimination

70. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. We assess the measure is not indirectly discriminatory within the meaning of the Equality Act.
71. As set out above, this is an administrative measure which applies in the same way to all individuals who are in scope, regardless of their protected characteristics.

Advancing equality of opportunity

72. We do not consider that the proposed changes will specifically advance the equality of opportunity for people with protected characteristics.

Discrimination arising from disability and duty to make reasonable adjustments

73. We do not believe that this measure specifically advances the equality of opportunity for people with protected characteristics.

Fostering good relations

74. We do not consider that these proposals would have any significant impact on the achievement of this objective.

Amend Magistrates' Court Sentencing Powers

Introduction

75. This measure will amend legislation in relation to the magistrates' court maximum penalty for six specific triable either-way offences.
76. The policy objective of this measure is to amend legislation in relation to six specific triable either-way offences so that the magistrates' court maximum penalty is specified as being "the general limit in the magistrates' court", rather than "6 months" as is currently stated in legislation for those offences. These six offences are:
- a. Section 1(6)(a) of the Prevention of Social Housing Fraud Act 2013 (unlawful sub-letting of secure tenancies)
 - b. Section 2(7)(a) of the Prevention of Social Housing Fraud Act 2013 (unlawful sub-letting of assured tenancies or secure contracts)
 - c. Section 30(3)(b) of the Modern Slavery Act 2015 (breach of various orders or requirements under this Act)
 - d. Section 339(2)(a) of the Sentencing Act 2020 (breach of a criminal behaviour order)
 - e. Section 354(4)(a) of the Sentencing Act 2020 (breach of a sexual harm prevention order)
 - f. Section 363(2)(a) of the Sentencing Act 2020 (breach of a restraining order)

Policy summary

77. On 2 May 2022, the previous government increased magistrates' court sentencing powers from 6 months to 12 months for most single triable either-way offences by commencing section 282 of the Criminal Justice Act 2003.
78. On 14 July 2022, the Judicial Review and Courts Act 2022 established separate general limits for magistrates' court sentencing powers for summary and either-way offences. It also allowed the Secretary of State for Justice to vary the limit for single triable either-way offences to either 6 months or 12 months via a negative Statutory Instrument.
79. Further legislation was introduced to clarify the combined effect of these changes and to amend over 200 offences, replacing references to "12 months" with "the general limit in a magistrates' court."
80. Six triable either-way offences were not covered by this legislation because their maximum penalty was specified as "6 months" instead of "12 months."
81. This measure changes the maximum term for these six offences from "6 months" to "the general limit in a magistrates' court," aligning them with other triable either-way offences. This is particularly important now, given the recent increase in magistrates' court sentencing powers to 12 months for a single triable either-way offence to avoid confusion and errors in sentencing.

Evidence and analysis – context

Affected Groups

82. The proposed change will have a direct impact on those defendants who:
- a. are charged with one of the six offences being amended by this measure; and
 - b. do not elect for a Crown Court trial; and
 - c. are given a sentence of more than 6 months and up to 12 months' imprisonment.
83. Following the changes to the 'Allocation to the Crown Court Guidance and Good Practice' in February 2021, magistrates' courts should already be retaining cases for trial which are likely to carry sentences up to eighteen months' imprisonment, subject to complexity. The measure will primarily impact cases for the relevant six offences that would have previously been sent to the Crown Court for sentencing, but which could now be retained in the magistrates' courts due to the maximum penalty being specified as "the general limit in the magistrates' courts" and when this limit is 12 months, rather than "6 months".

Equality Considerations

Direct discrimination

84. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that these changes are not directly discriminatory within the meaning of the EA, as they apply in the same way to all individuals regardless of their protected characteristics. No defendant will be treated less favourably in relation to any protected characteristic.

Indirect discrimination

85. Indirect discrimination occurs when the effect of a policy puts those sharing a protected characteristic at a particular disadvantage compared to those who do not. Despite the over representation of people with certain protected characteristics, race, gender and age, compared to the general population, we do not consider that this measure would put anyone at a particular disadvantage because of their protected characteristics as explained above.

Race

86. There is an overrepresentation of certain protected characteristics in our criminal justice system when compared to the general population. For instance, statistics show us that males, and in particular, young, black, minority ethnic males are overrepresented in the defendant and prison population.
87. However, as above, this measure will only impact cases with an expected custodial sentence length of 6-12 months' imprisonment that would previously have been sent to the Crown Court for sentence, but which can now be retained in the magistrates' courts. Therefore, bringing these six offences in line with the magistrates' court maximum of 12 months' imprisonment for a single triable

either-way offence is expected to only result in an extra 350 cases being retained to the magistrates' courts for sentencing per year. Magistrates' courts dispose of circa. one million cases per year (including SJP). We therefore do not consider that there would be any equalities impacts from this measure.

Age

88. This policy will only affect adult defendants, because cases with child defendants are generally heard in the youth courts. This includes a child who breaches a criminal behaviour order or a sexual harm prevention order. Additionally, children are unlikely to be able to commit the two offences relating to unlawful sub-letting or be subject to two of the orders which if breached give rise to a criminal offence. Adult offenders make up the majority of individuals charged with a TEW case (95% in 2023 of all individuals charged with a TEW case were adults).

Sex

89. We do not have data to show the breakdown by sex of those defendants whose cases were tried at the magistrates' court but committed to the Crown Court for sentence, and who received sentences of more than 6 and up to 12 months' imprisonment for a single TEW offence, i.e. those whose sentencing hearings would be in scope of this change. However, it is expected that this policy will affect more males because 89% of TEW offences heard at the Crown Court in 2023 involved male defendants⁴. However, as stated above, the impacts of this measure are estimated to be minimal and we do not consider that any one group of people who share a protected characteristic will be indirectly impacted by this policy change.

Other protected characteristics

90. We are not currently able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, and sexual orientation. Centrally held data for criminal courts in England and Wales does not include this information and it would only be obtainable at disproportionate costs. However, as stated above, we do not consider that there is likely to be any discrimination from this measure on these groups.

Discrimination arising from disability and duty to make reasonable adjustments

91. We do not consider that there is likely to be any discrimination in relation to disability and will continue to make reasonable adjustments for disabled people impacted by the policy proposals.

⁴ [crown-court-tool-2023.xlsx](#)

Harassment and victimisation

92. We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act 2010 as a result of this change.

Fostering good relations

93. We do not consider that there is any significant impact on the achievement of this objective.

