VAC Bill Factsheets: Courts measures

Crown Prosecutor Eligibility

What are we going to do

- The CPS are significantly restricted in appointing legal professionals who are not solicitors or barristers to work as Crown Prosecutors, even when the professional's specialism is criminal litigation with relevant independent practice rights and rights of audience.
- The Government believes that this should be addressed to help deliver efficiencies in the justice system. This legislation would remove unnecessary legislative barriers for certain legal professionals, including CILEX practitioners, that prohibit them from becoming Crown Prosecutors.
- By broadening the pool of eligible Crown Prosecutors, this measure enables the CPS to recruit from a wider talent pool, improving flexibility in staffing and potentially shortening waiting times for cases to be prosecuted in the longer term.

How are we doing to do it?

- Under section 1(3) of the Prosecution of Offences Act 1985 (the 1985 Act), Crown Prosecutors are required to have a “general qualification” as defined in section 71 of the Courts and Legal Services Act 1990. This requires prospective Crown Prosecutors to, at a minimum, have rights of audience in relation to any class of proceedings in any part of the Senior Courts, or all proceedings in county courts or magistrates’ courts. This would require Crown Prosecutors to have rights of audience to cover all the civil and criminal proceedings in the county courts and magistrates’ courts, or any proceedings in the Senior Courts.
- In order to remove the legislative barrier for the appointment of a wider range of legal professionals, this measure would amend sections 1(3) and 5(1) of the 1985 Act to remove the need for a Crown Prosecutor, and those appointed to take over conduct of criminal proceedings on behalf of the CPS, to possess a “general qualification”. This amendment will give the DPP greater flexibility in who they designate as Crown Prosecutors.
- This change will not affect the reality that Crown Prosecutors will need to have rights of audience to fulfil their function of appearing in court to prosecute offences. Under section 12 of the Legal Services Act 2007, only an authorised person, such as a solicitor, barrister, or CILEX Practitioner, can appear before and address courts. Crown Prosecutors must still be authorised where rights of audience are needed in criminal courts. However, they would no longer need to meet the ‘general qualification’ threshold. Existing safeguards under Section 14 of the Act will continue to apply, which makes it an offence to carry out reserved legal activities unless entitled to do so.

Frequently asked questions:

Q: What is CILEX

- CILEX is the Chartered Institute of Legal Executives - a professional body for over 17,000 members, made up of paralegals, CILEX lawyers and other specialist legal professionals in England and Wales.

- The CILEX Professional Qualification (CPQ) is a progressive framework designed to develop specialist lawyers, regardless of whether they have a degree. The CPQ comprises three stages: Foundation, Advanced and Professional with each stage building on legal knowledge and skills. The pathway enables individuals to qualify as specialist practitioners in areas such as criminal litigation, often while working and gaining practical experience at the same time

Q: What will the proposed change do?

- This measure removes a statutory barrier, allowing the CPS to consider CILEX members for Crown Prosecutor roles.
- The CPS retains full discretion regarding who they ultimately employ as Crown Prosecutors.

Q: Why are we doing this?

- This measure aligns with the Government's commitment to increasing the number of available prosecutors.
- By removing this statutory barrier, the CPS can broaden its recruitment pool without lowering professional standards.
- By allowing the CPS the flexibility to recruit legal professionals from non-traditional pathways, this measure will increase the pool of potential Crown Prosecutors, including lawyers from more diverse backgrounds.
- Expanding access to Crown Prosecutor roles will support diversity and social mobility within the legal profession.

Q: Are CILEX practitioners qualified to work as Crown Prosecutors?

- CILEX practitioners already work in regulated law firms across England and Wales, performing similar functions to solicitors.
- This measure ensures that qualified CILEX practitioners can be considered for Crown Prosecutor roles where their expertise aligns with CPS requirements.

Set Private Prosecution Rates

What are we going to do?

- 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.

How are we going to do it?

- The measure introduces an enabling power only, and not the Regulations setting out specific rates. Regulations setting out the rates will be introduced after the Bill has come into force, and after full consultation with relevant stakeholders.

Background

- 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 costs 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 costs. Typically, bills received cover the costs of an investigation, litigation, advocacy, and disbursements.

- 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 but are historically around five times higher than the equivalent criminal legal aid rates. They are also higher than Crown Prosecution Service (CPS) rates.

- The only safeguard against excessive costs is the Court's (or LAA's) assessment of the reasonableness of the costs 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.

- With increasing SCCO rates, the disparity between costs in private prosecutions and legally aided cases 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 costs can be claimed.

- 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.

- The majority of private prosecutions do not result in a claim from Central Funds, so a large proportion of the sector will be unaffected. Private prosecution cases will still be able to claim costs, supporting those bringing prosecutions in the public interest. We will consult on what the new rates will be, and setting the rates will ensure a more transparent process for recovering private prosecution costs.

Unduly Lenient Sentence Scheme

What are we going to do?

- This measure will address the practical issues caused by cases that are brought to the Law Officers' attention close to the expiry of the 28-day time limit and will provide clarity on when requests to review a sentence must be made by, specifically in relation to the 28th day.
- We will legislate to amend the Unduly Lenient Sentence (ULS) scheme time limit to guarantee that the Attorney General has at least 14 days to consider whether to refer a sentence once a request to review a sentence is received in the last 14 days of the 28-day time period.

How are we going to do it?

- The ULS scheme provides a way to ensure anyone can ask for certain Crown Court sentences to be reviewed by the Attorney General's Office (AGO) if they think the sentence is too lenient. If the Law Officers (Attorney General and Solicitor General) agree the sentence appears unduly lenient, they can ask the Court of Appeal to review the sentence. There is a fixed time limit of 28 days for referrals to the Court of Appeal, to help everyone involved have certainty about sentencing.
- The ULS Scheme was launched in 1988 and was originally envisaged to handle a few dozen cases each year. As awareness of the Scheme has improved, the number of referrals to the AGO has increased: the AGO received 983 referrals in 2019 and over 1,200 in 2023.
- We will amend the Criminal Justice Act 1988 so that rather than there being a strict 28 day time limit from the date of sentence for the Law Officers to apply to the Court of Appeal for leave to refer a case, where a request to review a sentence is received in the last 14 days of the 28-day period, they will have 14 days from receipt to make a reference.
- The request to the Law Officers to consider a sentence would still need to be made within 28 days from the date of sentence. This measure will allow for full consideration of every request, even those not received until very close to the end of the 28-day period after sentencing.

Frequently asked questions:

Q: Why is this measure needed and what will it achieve?

- The strict 28-day time limit can create practical issues, as potential unduly lenient sentences are often only brought to the Attorney General's Office's (AGO) attention close to expiry of the time limit.
- These problems have become more acute as the number of requests received by AGO to review sentences has greatly increased in recent years, as awareness of the scheme has improved.
- Introducing this measure will guarantee that the Attorney General's Office's (AGO) and the Attorney General (AG) has at least 14 days to consider a sentence once a request to review is received, including those received outside of business hours on the 28th day.

Q: Will this extension also apply to those making applications to the ULS scheme?

- The 28-day time limit reflects similar constraints on those convicted of an offence appealing a conviction or sentence. It is important for both victims and offenders that we avoid ongoing uncertainty about the sentence to be served.
- We appreciate the need for a clear and fixed time limit for both victims and offenders. It is very important, however, that there is a finality in sentencing and therefore the time limit for making a request to the Attorney General to refer a sentence will remain 28 days from the date of that sentence.
- This amendment will help with practical issues caused by cases that are brought to the Attorney General's attention close to expiry of the time limit, and ensure that requests made at any time within the 28-day time frame, including those outside of business hours on the 28th day, can be fully considered.

Q: Does this mean that up until this point ULS decisions have been rushed and potentially therefore not sound?

- All requests made to the Attorney General's Office to review a sentence are fully and properly considered in detail. However, ensuring that this is done in relation to requests received close to expiry of the time limit can put significant pressure on the CPS and AGO. The amendment therefore seeks to relieve that pressure and ensure the future long-term sustainability of the scheme, ensuring that potential unduly lenient sentences continue to get the detailed consideration they deserve.

Q: In any given month, what is the average number of cases that are received between days 15 and 28?

- In 2024, of the 831 sentences considered by the AGO, 108 were received on days 15-28. Every case requires a substantive amount of consideration by a Law Officer, and the scheme was originally envisaged to handle a few dozen cases a year.

Q: Would an increase in resources within the AGO not address the problem?

- The administration of the ULS Scheme is kept under constant review to ensure that it operates efficiently.
- This amendment follows steps which have already been taken by AGO to improve the effectiveness and efficiency of the ULS Scheme, including increasing resources and introducing an online form for requests to review a sentence.

Q: How can you be sure that 14 days will be sufficient processing time to ensure that you can future proof this measure?

- The amendment is based upon current experience as to the reasonable length of time required for the relevant material to the sentence to be obtained and fully considered.

Q: Does this give victims more time, in practice, if they request review of a sentence between days 15-28?

- Current guidance is that a request to the Attorney General to review a sentence should be made no later than the 28th calendar day after the sentence was imposed (in business hours and with sufficient time for consideration).

- Following the amendment, a request to the Attorney General must still be made no later than the 28th calendar day after the sentence was imposed but could be made at any point within that period, including outside of business hours on the 28th day.

Magistrates' Court Sentencing Powers

What are we going to do?

- We are amending legislation in relation to six triable either-way offences to bring their maximum penalty in the magistrates' courts in line with other triable either-way offences.

How are we going to do it?

- Currently the magistrates' court maximum penalty for these offences is specified as being "6 months". This is inconsistent with the magistrates' court maximum penalty for other triable either-way offences, which from 18 November 2024, has been 12 months and will mean that magistrates will be able to impose sentences of up to 12 months for these offences. Amending these offences will mean that they are consistent with all other either-way offences, particularly as magistrates' court sentencing powers have been increased to 12 months again.

- In March 2023, other offences were amended via secondary legislation to specify that their maximum penalty was "the general limit in the magistrates' courts" (which can be set as being either "6 months" or "12 months" by amending section 224 of the Sentencing Code by secondary legislation). The same change for the six offences in this provision could not be done via secondary legislation.

- We are amending the primary legislation relating to six triable either-way offences so that the magistrates' court maximum penalty is specified as being "the general limit in the magistrates' courts", rather than "6 months", as is currently stated in the legislation for those offences.

Background

- On 4 May 2022, the government increased magistrates' court sentencing powers from 6 months to 12 months for a single either-way offence by commencing section 282 of the Criminal Justice Act 2003. This change covered all offences that were contained in legislation made at the same time as, or before, the Criminal Justice Act 2003. It also covered offences made in later legislation as long as they referred to section 282.

- On 14 July 2022, section 13 of the Judicial Review and Courts Act 2022 amended section 224 of the Sentencing Code to create separate maximum sentences (called 'limits') that magistrates can give for summary offences and for either-way offences. This amendment also gave the Secretary of State a power to alter the magistrates' courts' limit for a single either-way offence. The power is like a switch that can change the limit from being either 6 months' or 12 months' imprisonment. On 18 November 2024, the switch was used to increase magistrates' court sentencing powers to 12 months for a single either-way offence.

- The maximum penalty for the majority of triable either-way offences tried summarily (i.e. in the magistrates' courts) have already been changed via secondary legislation in 2023 to read "the general limit in the magistrates' court". However, the same change for the six offences in this measure could not be done via secondary legislation because these offences specified a maximum penalty of 6 months, instead of 12 months with a reference to section 282 of the Criminal Justice Act 2003. Consequently, these offences are anomalous and they can only be amended via primary legislation. They are purely technical amendments.

- Since the Government has recently legislated to increase magistrates' court sentencing powers to 12 months for a single triable either-way offence, this measure is particularly pertinent now to avoid confusion and errors in sentencing.

Frequently asked questions:

Q: What are the six offences that this measure will affect?

- Section 1(6)(a) of the Prevention of Social Housing Fraud Act 2013 (unlawful sub-letting of secure tenancies)
- Section 2(7)(a) of the Prevention of Social Housing Fraud Act 2013 (unlawful sub-letting of assured tenancies or secure contracts)
- Section 30(3)(b) of the Modern Slavery Act 2015 (breach of various orders or requirements under this Act)
- Section 339(2)(a) of the Sentencing Act 2020 (breach of a criminal behaviour order)
- Section 354(4)(a) of the Sentencing Act 2020 (breach of a sexual harm prevention order)
- Section 363(2)(a) of the Sentencing Act 2020 (breach of a restraining order)

Q: Does this mean that some individuals were given shorter sentences than they should have been?

- No. The power for magistrates to refer triable either-way cases to the Crown Court to hand down sentences longer than six months has never been removed. If magistrates considered that an offender who committed one of these six offences should have received a longer sentence than their powers allowed, the case could be committed to the Crown Court for sentencing.
- Now that magistrates' court sentencing powers have been increased to 12 months (since 18 November 2024), this amendment will ensure more cases concerning these six offences can be retained for sentencing in the magistrates' courts.

Q: When does the MoJ expect to be able to assess whether extending magistrates' court sentencing powers has reduced the remand population and freed up Crown Court sitting days as intended?

- We will be able to assess the impacts of extending magistrates' court sentencing powers once we have sufficient time for the policy to have been in place and for cases to have worked through the system with outcomes and data associated with those outcomes.