

Title: Policing and Crime Bill - amendments to the Firearms Act 1968 RPC ref: RPC-3249(1)-HO Lead department or agency: Home Office Other departments or agencies: Department for Business, Innovation and Skills	Impact Assessment (IA)				
	Date: 25 May 2016				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Primary & Secondary legislation				
Contact for enquiries: Drugs & Firearms Licensing Unit (DFLU), Home Office.					
Summary: Intervention and Options					RPC Opinion: Green

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£m	£0m	£0m	Yes/No	Qualifying Regulatory Provision (In)
What is the problem under consideration? Why is government intervention necessary? <p>The Law Commission commenced a review of firearms legislation in January 2015 and identified priority areas where the legislation would benefit from amendment to close potential legislative loopholes due to public safety concerns and to clarify the law. Ministers agree that these would benefit from amendment and that a number of provisions could be included in the Policing and Crime Bill to strengthen the current firearms legislation.</p>				

What are the policy objectives and the intended effects? <p>The primary objective is to preserve public safety and to strengthen firearms legislation to stop abuse of the law by criminals. The aim is also to clarify and simplify the law around the specific areas to make it easier for law enforcement and legitimate certificate holders to understand and use the law. In amending firearms legislation, the aim is to prevent the use of antique firearms in crime and to stop the trend for them to be reactivated into live firing weapons and used to commit crime.</p>

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) <p><u>Option 1</u> is to make no changes (do nothing). Failure to strengthen firearms legislation will mean that it will continue to leave the law open to abuse by those intent on criminal activity, as described in the background section.</p> <p><u>Option 2</u> is to amend firearms legislation.</p> <p>Our preferred option is option 2. We are proposing to amend firearms legislation in the priority areas identified through the Law Commission consultation: to define antique firearms (2a), to introduce a new offence for converting imitation firearms with unlawful intent (2b), define component parts (2c) and define lethality (2d).</p>

Will the policy be reviewed? It will be reviewed		If applicable, set review date: 2018			
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

_____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description: Amendments to the Firearms Act 1968 as suggested by the Law Commission

FULL ECONOMIC ASSESSMENT

Price Base Year 2015/16	PV Base Year 2015/16	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

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

There is currently a lack of data on the firearms within scope of this impact assessment – we do not know the number of these types of firearms nor the number of prosecutions associated with their use. Given the additional difficulty in predicting the behavioural response of affected groups, it is not possible to reliably monetise most of the costs. There will be no costs resulting from the introduction of primary legislation.

Criminal justice agencies: The cost of the new offence on firearms conversion is estimated to be £8,900 per prosecution, although it is not possible to predict the number of prosecutions under this new offence.

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

Registered Firearms Dealers (RFDs) and collectors of antique firearms: The value of some antique firearms could potentially fall if they become subject to certificate controls, which would come with admin costs.

Criminal justice agencies: Minimal, if any, training and familiarisation costs. Potential increase in legitimate prosecutions from closing legal loopholes – increased court time, more expert witness time and increase in number of prison sentences.

Law enforcement: Minimal, if any, training and familiarisation costs. Potential increase in legitimate prosecutions would lead to increased police time on firearms cases. Potential increased admin burden from controls on some antiques.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

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

Due to the difficulties explained above, it is not possible to reliably monetise most of the benefits.

The public: Increased public safety – as an indicative estimate of potential benefits, one fewer fatality and 5% fewer serious injuries from the firearms in scope would save an estimated £2million annually.

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

The public: Increased public confidence in the criminal justice system.

Registered Firearms Dealers (RFDs) and collectors of antique firearms: Increased certainty and clarity by providing legal definitions of various terms, reducing the risk of prosecutions due simply to legal ambiguity.

Criminal justice agencies: Likely decrease in illegitimate prosecutions which result from ambiguity in law – reduced court time, less expert witness time and reduction in number of prison sentences. Shorter and less contentious cases as the ambiguity is removed.

Law enforcement: Decrease in illegitimate prosecutions and increased clarity would lead to reduced police time on firearms cases.

Key assumptions/sensitivities/risks**Discount rate (%)**

Some legitimate collectors could seek compensation if the value of their antique firearms diminish due to them becoming subject to certificate controls under the new definition or due to omissions from the existing Home Office list of obsolete calibres. Before amending the list, we will run a consultation exercise to better understand how our approach will impact on the antiques sector.

The new offence on firearms conversion could potentially not be used by the police and prosecutors. We will work with the police and CPS to provide guidance to mitigate any concerns.

Having a list of what constitutes a 'component part' in statute could make it difficult to amend the list if definitions need to change. We will be making provision for an order for the Secretary of State to amend if appropriate, for example based on changes in technology or the threat picture.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target:
Costs: £0m	Benefits: £0m	Net: £0m	£0m

Evidence Base (for summary sheets)**A. Strategic Overview****A.1 Background**

Tackling the threat of criminal use of firearms in the UK is a priority for the government. Although the number of offences involving firearms (excluding air weapons) recorded by the police has continued to fall, law enforcement agencies are concerned that firearms legislation is being abused by those intent on criminal activity.

The law that governs the possession and acquisition of firearms in Great Britain is complex and is currently set out in over 34 Acts of Parliament dating back to 1842. The Home Office asked the Law Commission to conduct a scoping review of firearms legislation to identify areas which were open to abuse and causing unnecessary difficulties for law enforcement agencies and legitimate holders of firearms.

The Law Commission commenced a review of firearms legislation in January 2015 and identified priority areas, which are set out within this impact assessment, where the legislation would benefit from amendment to: (i) close potential legislative loopholes due to public safety concerns; and (ii) clarifying and simplifying the law and making it easier to

understand and use. The Law Commission ran a consultation between July and September and on 16 December 2015 the Law Commission published their report and recommendations.

Links to the Law Commission consultation and report are below:

Consultation: <http://www.lawcom.gov.uk/project/firearms/>

Report: http://www.lawcom.gov.uk/wp-content/uploads/2015/12/lc363_firearms.pdf

Impact Assessment:

http://www.lawcom.gov.uk/wp-content/uploads/2015/12/lc363_firearms_impact.pdf

The areas are:

(a) Defining 'antique firearm'

The Firearms Act 1968 exempts antique firearms, from the scope of firearms legislation. There is no requirement for antique firearms held as a 'curiosity or ornament' to be held on a firearm certificate as the owner is not intending to fire the weapon. However, current legislation does not provide a definition of 'antique', thus creating uncertainty amongst law enforcement agencies and legitimate collectors as to what constitutes an antique firearm.

While many refer to the definitions set out in the Home Office non-statutory guidance (link attached:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479794/Guidance_on_Firearms_Licensing_Law_Nov_2015_v16.pdf, there is no legal definition. It is generally accepted that firearms included on the Home Office obsolete calibre list are not subject to certificate controls.

This poses the following problems:

1. Public safety is put at risk when working antique firearms that can be acquired without any form of restriction fall into the possession of criminals;
2. The police cannot be certain whether a suspect is unlawfully in possession of a prohibited weapon;
3. The Crown Prosecution Service (CPS) has difficulty deciding whether to charge an individual with an offence;
4. Experts rely upon different criteria when giving evidence on whether a firearm is an antique which can confuse juries and leads to inconsistent trial outcomes;
5. Legitimate collectors may not know with certainty whether they are complying with the law.

Data published by the National Ballistics Intelligence Service (NABIS) on 8 September 2015¹ shows that obsolete calibre firearms have been identified as having been discharged in fatal shootings and that 59 antique firearms have been recovered in criminal circumstances in the UK in the previous 12 months.

Subsequent data published by NABIS on 3 March 2016² shows that there are currently 93 outstanding inferred firearms (inferred firearms are guns which NABIS knows have been used in crime) that are confirmed as obsolete calibre, or believed to be obsolete calibre, that have been linked to shootings at either people or property.

¹ <http://www.nabis.police.uk/news/NABIS-Takes-Part-In-Law-Commission-Firearms-Event>

² <http://nabis.police.uk/news/NABIS-Issues-Latest-Quarterly-Stats>

Since NABIS was established in 2008, 423 obsolete calibre firearms have been recovered and submitted to NABIS; of these 98 were from firearms surrenders (where firearms were voluntarily handed in to the police) but 325 were recovered in criminal circumstances such as an arrest or execution of a search warrant.

NABIS also states that 52% of antique firearm recoveries from police intervention or criminal circumstances are found in combination with suitable ammunition.

We have used the data provided by NABIS as an indication of the scale of the problem, in which criminals are gaining access to obsolete calibre firearms and using them to commit crime.

(b) Creating a new offence to criminalise those in possession of articles with intent to use them in the unlawful conversion of imitation firearms

Law enforcement agencies expressed a concern that there is not an offence of being in possession of articles with the intention of using them unlawfully to convert imitation firearms into live firearms. Creation of a new offence will enable law enforcement to prosecute persons who are in possession of articles with intent to use them to unlawfully convert imitation firearms, without legal entitlement as a Registered Firearms Dealer. This is to address the fact that there is currently nothing in law to deter persons from being in the process of unlawfully converting a firearm.

(c) Defining 'component part'

The Firearms Act 1968 states that the term "firearm" includes "any component part of such a lethal or prohibited weapon". The effect of this provision is that whenever the legislation refers to a firearm it is also referring to a component part. However there is currently no statutory definition of "component part". A definition is contained in the Home Office Guide on Firearms Licensing Law³ which is used for guidance purposes by law enforcement, certificate holders and the trade/industry but the guidance has no statutory footing.

The main problems caused by this lack of definition are an increased risk to public safety because defendants may walk free solely based on the term's ambiguity; difficulties for the police in investigations; difficulties for the CPS in deciding whether to prosecute; longer, more complex and more costly trials; and that members of the licensed firearms community may inadvertently commit a serious offence.

(d) Defining 'lethality'

The Firearms Act 1968 defines a firearm as a "lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged". This makes lethality integral to knowing whether something is a firearm, yet the law does not provide a definition of lethality. This raises a number of problems including a greater reliance on expert witness; a lack of clarity over whether some air weapons and poorly converted imitations are firearms; and the knock on effect of not knowing when offenders, who are banned from firearm ownership, are in breach of their bans.

Ministers have agreed that the priority areas identified by the Law Commission's review of firearms legislation would benefit from amendment and should be included in the Policing and Crime Bill to strengthen the current firearms legislation.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479794/Guidance_on_Firearms_Licensing_Law_Nov_2015_v16.pdf

Descriptions of terms used in this impact assessment:

Registered Firearms Dealer (RFD): A registered firearms dealer is defined at section 57(4) of the Firearms Act 1968 as a person or a corporate body who, by way of trade or business: manufactures, sells, transfers, repairs, tests or proves firearms or ammunition to which section 1 of this Act applies, or shotguns; or sells or transfers air weapons. Firearms dealers are not authorised to trade in prohibited weapons without the Secretary of State's or Scottish Minister's authority.

Antique Dealer: Some antiques dealers may also sell antique firearms as part of their business activities. As there is no requirement for antique firearms held as a 'curiosity or ornament' to be held on a firearm certificate there is no requirement for the antique dealer to be registered with the police as a firearms dealer.

Airsoft: This is an activity employing low-powered weapons in acting out military or law enforcement scenarios, where the participants (known as airsoft skirmishers) shoot at each other with plastic pellets. The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 provides a defence for making a realistic imitation firearm available for 'permitted activities', defined as "the acting out of military or law enforcement scenarios for the purposes of recreation".

A.2 Groups Affected

Law enforcement – police forces in England and Wales, and Police Scotland; National Crime Agency; Border Force; Her Majesty's Revenue & Customs (HMRC).

Criminal justice agencies - Crown Prosecution Service; the courts; Prison Service; Probation Service; National Offender Management Service (NOMS).

Individuals - legitimate certificate holders; collectors of firearms; airsoft skirmishers.

Businesses - Registered Firearms Dealers; antiques dealers; airsoft retailers; museums.

Proof House Authority (Houses in London and Birmingham): Section 58 of the Firearms Act 1968 exempts the Proof Authority from the provisions of the Act. They are also nominated by the Home Office under the Firearms Act for the decommissioning of firearms and under the authority of the Department for Business, Innovation & Skills for the proofing (certification) of firearms.

A.3 Consultation

Within Government

All government departments had an opportunity to respond to the Law Commission's public consultation. We engaged separately with the Ministry of Justice (MOJ), Border Force (BF), Department for Business, Innovation & Skills (BIS), Crown Prosecution Service (CPS), Ministry of Defence (MOD), Department for Culture, Media & Sport (DCMS), Department for Transport (DfT) and the Scottish Government to make them aware of the key issues being raised and to seek their views on the proposals.

The Ministry of Justice had an interest due to the proposed creation of a new offence to criminalise those in possession of articles with intent to use them in the unlawful conversion of imitation firearms.

We also engaged with the Department for Business, Innovation & Skills (BIS) due to the possible affect the provisions could have on collectors and dealers of antique firearms and deactivated firearms, as they administer the import of antiques and deactivated firearms.

Public Consultation

The Law Commission commenced a review in January 2015 and received over 200 responses to their scoping consultation paper on firearms law. Responses were received from numerous individuals, the British Association for Shooting & Conservation (BASC), Border Force, the Council of Her Majesty's Circuit Judges, the Countryside Alliance, the Crown Prosecution Service (CPS), the Marine Management Organisation, the Metropolitan Police Service, the National Ballistics Intelligence Service (NABIS), the National Gamekeepers Organisation, the National Rifle Association, both Proof Authority Houses, the Scottish Association for Country Sports, the Scottish Government and the United Airsoft Retailers' Association.

During the early stages of the project the Law Commission attended a significant number of consultation meetings, engaging with a wide range of stakeholders.

Following stakeholder engagement, the Law Commission identified priority areas where firearms legislation would benefit from amendment. These included:

- a. Defining what is an 'antique firearm'
- b. Creating a new offence to criminalise those in possession of articles with intent to use them in the unlawful conversion of imitation firearms;
- c. Defining a 'component part';
- d. Defining lethality.

These proposals were tested through a Law Commission public consultation between 21 July and 21 September 2015. The consultation provided an opportunity for legitimate certificate holders and collectors to raise concerns about any adverse impact and enabled the Law Commission to refine their proposals.

The proposals were further tested at a Law Commission symposium held on 8 September with representation from stakeholder groups, the police and the general public. Home Office officials also attended the event.

The Home Office has been in dialogue with the Law Commission throughout the review. We understand that there is support for the majority of the proposals in their scoping consultation document which is highlighted further in this document.

Support for the proposal to define lethality was received from the Crown Prosecution Service and Gun Trade Association— see chapter 2 in the Law Commissions final report;

Support for the proposal to define component parts of firearms was received from the Countryside Alliance and Gun Trade Association – see chapter 3 in the Law Commissions final report;

Support for the proposal to define antique firearms was received from the British Association for Shooting and Conservation, Historical Breechloading Smallarms Association, Countryside Alliance, Vintage Arms Association, Bonham's and Holts auction houses – see chapter 4 in the Law Commissions final report; and,

Support for the creation of a new offence was received from the Crown Prosecution Service, NABIS, the Council of Her Majesty's Circuit Judges and the Gun Trade Association – see chapter 6 in the Law Commissions final report.

These are set out in greater detail in the Law Commission's report *Firearms Law – Reforms to Address Pressing problems* which was published on 16 December 2015. A link to the report is attached:

http://www.lawcom.gov.uk/wp-content/uploads/2015/12/lc363_firearms.pdf.

B. Rationale

Concerns were raised by law enforcement that firearms legislation is open to abuse by those intent on criminal activity. In particular they have seen an increase in the criminal use of antique firearms and reactivated firearms.

This view is supported through firearms recovered and submitted to NABIS⁴ which show that obsolete calibre antique firearms are increasingly being used by UK criminals and that the criminal market is producing suitable ammunition for these firearms – more recently from kits and instructions bought online.

Law enforcement, criminal justice agencies, shooting organisations and the trade/industry have also complained that the law is fragmented, unclear and imposes unnecessary costs and burdens. These views were supported by the responses to the Law Commission consultation which identified areas where potential loopholes needed to be closed as a priority.

C. Objectives

The primary objective is to enhance public safety and to strengthen firearms legislation to stop abuse of the law by criminals. NABIS has identified that obsolete calibre firearms have been identified as having been discharged in fatal shootings. Data published by NABIS on 8 September 2015 shows that there were 59 antique firearms recoveries in criminal circumstances in the previous year. We intend to strengthen firearms legislation and to close potential legislative loopholes which allow exploitation by criminals intent on the illicit use of firearms. This will be achieved through the introduction of the firearms provisions in the Policing and Crime Bill.

The provisions will also aim to clarify and simplify the law around specific areas of firearms legislation to make it easier for law enforcement and legitimate certificate holders to understand and use the law.

Law enforcement has identified that criminals are exploiting potential legislative loopholes concerning antique firearms held as a 'curiosity or ornament' as such weapons have been used in crime. A policy objective is to ensure that the legislation is clear for legitimate certificate holders to understand and use, and provides fewer opportunities for the

⁴ <http://www.nabis.police.uk/news/NABIS-Takes-Part-In-Law-Commission-Firearms-Event>

legislation to be abused by criminals by making them less able to acquire antique firearms to convert into live firing weapons. In amending firearms legislation, the aim is to prevent the use of antique firearms in crime and to stop the trend for them to be reactivated into live firing weapons and used to commit crime.

D. Options

Option 1 is to make no changes (do nothing)

Failure to strengthen firearms legislation will mean that the law will remain open to abuse by those intent on criminal activity, as described in the background section.

Option 2 is to amend firearms legislation. This will be using primary and secondary legislation.

Our preferred option is option 2. We are proposing to amend firearms legislation in the priority areas identified through the Law Commission consultation:

- 2a. Defining an 'antique firearm': the current legislation does not define an antique firearm and this causes difficulties for law enforcement and collectors. Law enforcement is concerned that there is an increase in cases where antique firearms have been used by criminals. The obsolete calibre list in the Home Office Guide on Firearms Licensing Law is widely used by law enforcement, and the industry, as a guide to whether or not a firearm is considered an antique, however the list is non-statutory. We will define an antique firearm in primary legislation as a firearm which has an obsolete ignition system or has an obsolete calibre. We will also hold a public consultation to determine which firearms will fall within these definitions including reviewing the Home Office obsolete calibre list to define which firearms should continue to be specified on the list and therefore not subject to certificate controls, and which firearms should be omitted and revert to certificate controls. The revised list will then be placed in statute using secondary legislation. The Secretary of State will have the power to make subsequent changes to the obsolete calibre list by way of a negative Order.
- 2b. Creating a new offence to criminalise those in possession of articles with intent to use them in the unlawful conversion of imitation firearms: To help strengthen public safety we also intend to legislate in primary legislation to introduce a new offence so that persons who are in possession of articles with intent to use them to unlawfully convert imitation firearms, without legal entitlement as a Registered Firearms Dealer, can be prosecuted. This is to address the fact that there is currently nothing in law to deter persons from being in the process of unlawfully converting a firearm.
- 2c. Defining a 'component part': there is currently no statutory definition of a component part of a firearm but the component parts of a firearm are themselves subject to control and must be held on a firearm certificate. Component parts of some prohibited firearms and also subject to strict control and may only be possessed with the authority of the Secretary of State. A definition is contained in the Home Office Guide on Firearms Licensing Law which is widely referred to by the police, certificate holders and the industry.

In our guidance, the term component part may be held (according to case law) as including: (i) the barrel, chamber, cylinder; (ii) frame, body or receiver; (iii) breech,

block, bolt or other mechanism for containing the charge at the rear of the chamber and (iv) any other part of the firearm upon which the pressure caused by firing the weapon impinges directly.

The lack of definition and clarity has caused difficulties for law enforcement as there is no statutory footing on which to determine whether a component part is subject to certificate controls. Consequently, legitimate holders have been unclear about which parts need to be held on certificate.

We intend to legislate so that a definition is provided in (primary) legislation. Secondary legislation will be introduced in order that the Secretary of State will have the power to amend the list of component parts by way of an affirmative order.

- 2d. Defining lethality: Section 57(1) Firearms Act 1968 defines a firearm as a lethal barrelled weapon but the Act does not define the term 'lethal'. This causes difficulty in practice for the industry and law enforcement as there is uncertainty whether the weapon is in fact a firearm and accordingly subject to controls. This can make criminal trials lengthier and more expensive as it is left to the courts to determine whether or not a weapon is lethal.

As part of the Law Commission's proposals, a muzzle velocity of one joule was proposed, which is in-line with a recommendation by the Firearms Consultative Committee (FCC) in their Eleventh report⁵. The FCC recommended this because the one joule limit is at a level below which it is extremely unlikely that a lethal injury might be inflicted, whatever the weapon and projectile. A limit of one joule takes account of projectiles that have intrinsically high penetrative qualities, such as darts, and is significantly above the limit of 0.08 joules contained in the European Standard for the Safety of Toys.

The lower the muzzle energy the less likely firearms are to cause injury and death. Therefore to maintain public safety and to provide clarity for law enforcement and legitimate holders of firearms, we intend to define lethality in primary legislation by reference to a fixed muzzle kinetic energy and to set this at a velocity threshold of one joule. Muzzle kinetic energy provides an indication of the overall power of a missile as it leaves the barrel of a weapon. As a result, this provides an indication of the weapon's potential to wound.

A threshold of one joule would also tie in with legislation in Scotland and Northern Ireland. The threshold of 1 joule as the determining factor in defining lethality is already present in the Home Office Guide on Firearms Licensing Law. Firearms manufacturers and registered firearms dealers work within the parameters of the Firearms Act, and therefore are already familiar with muzzle velocity thresholds and operate within them.

We also intend to apply an exemption for airsoft weapons so that this negates the requirement for airsoft weapons to be sold only by registered firearms dealers which would adversely impact on the airsoft trade/industry.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/250931/hc501.pdf

E. Appraisal (Costs and Benefits)

DATA

It is important to note a significant limitation on the data available on the (mis)use of firearms in the United Kingdom. Most bodies who record criminal incidents involving firearms do not do so in a way which is conducive to this impact assessment. This is because the firearms that are of particular concern to this report often cut across the subcategories of firearms present in the data. For example, reform of the law surrounding antique firearms is integral to this impact assessment. However, this is not a category of firearm recorded by Hospital Episode Statistics. Instead, they use handguns, rifles and unspecified firearms amongst other subcategories. These subcategories could all include, but are not limited to, antique firearms. Similarly, the Office of National Statistics more generalist categories of crime type, such as "Violence with injury" are of limited utility. The result of this is that, although recorded information on firearms does exist, often only indicative examples can be given below.

There are also limitations with regards to understanding the scale of firearms trade affected by these reforms. The Firearms Act 1968 exempts antique firearms from the scope of firearms legislation. This effectively means that anyone is able to possess, acquire and sell antique firearms without the need to be registered with the police as a firearms dealer. As at 31 March 2015 there were 3,422 Registered Firearms Dealer certificates on issue in England and Wales but we are unable to quantify how many of these dealers' trade also includes sales of antique firearms.

As there is no requirement for sales of antique firearms to only be conducted by registered firearms dealers, some antiques dealers may also sell antique firearms as part of their day-to-day business activities. Additionally, it should be noted that a large number of transactions will also be conducted by individual owners at gun fairs.

As there is no regulatory process for antiques dealers we are unable to quantify how many dealers of this type also sell antique firearms as part of their business activities and we are unable to quantify how many antiques dealers there are.

We have spoken to representatives of the Gun Trade Association, British Sports and Shooting Council, British Association of Shooting and Conservation and the Historical Breechloading Smallarms Association, who have all confirmed that the nature of the antiques trade makes it difficult to assess the number of businesses that sell antique firearms.

We intend to define an antique firearm in primary legislation as a firearm which has an obsolete ignition system or has an obsolete calibre. To determine which firearms will then fall within these definitions we will hold a public consultation and we will review the Home Office obsolete calibre list to determine which firearms should be specified on the list and therefore not subject to certificate controls. The revised list will then be placed in statute using secondary legislation. The Secretary of State will have the power to make subsequent changes to the obsolete calibre list by way of a negative Order.

As part of our public consultation we will also aim to seek information from respondents on whether they are a firearms dealer, antiques dealer or whether they are an individual owner. We will then be able to provide an assessment of the impact on business.

We have worked together with the Law Commission, which has produced its own impact assessment, to ensure that all costs and benefits associated with the proposals have been identified. Given the lack of data on the firearms within scope and the difficulty in predicting how affected groups would respond to the proposals, it is not possible to present a fully monetised cost benefit analysis. However, where some information is available, estimates have been provided.

OPTION 1 – is to make no changes (do nothing).

COSTS

If firearms legislation is not changed it will continue to be fragmented, unclear and impose unnecessary costs and burdens for law enforcement, criminal justice agencies, shooting organisations and the industry. The legislation will also continue to remain open to abuse by criminals. This is the baseline option, meaning that the costs of Option 2 are assessed relative to Option 1 (i.e. additional costs on top of the status quo scenario).

BENEFITS

There are no additional benefits under Option 1.

OPTION 2 – is to amend firearms legislation.

COSTS

2a. Defining an ‘antique firearm’

Registered Firearms Dealers (RFDs)

Impact on value of antique firearms: RFDs could be affected as the value of some antique firearms could diminish. This would occur if under the new definition some firearms previously identified as antique could be omitted from the Home Office obsolete calibre list and revert to certificate controls as they will become prohibited weapons. This could affect sales of antique firearms by RFDs. RFDs who trade in prohibited firearms are required to comply with section 5 of the Firearms Act 1968 and hold the Secretary of State’s authority permitting them to trade in prohibited items. Legitimate collectors of antique firearms may not be able to continue to possess them unless they are held on a suitably conditioned firearm certificate.

The consultation process will clarify which firearms on the Home Office obsolete calibre list will be affected by this proposal. The associated costs to business will be assessed prior to the introduction of secondary legislation.

We recognise that there may be some familiarisation costs due to the proposed changes to the Home Office obsolete calibre list. We are anticipating covering this aspect in more detail in the separate consultation impact assessment.

Collectors and dealers of antique firearms

Impact on value of firearms previously considered antiques: The proposed changes to the obsolete calibre list could mean that a firearm previously considered an antique, and therefore not subject to certification controls, would become less desirable if it required a certificate. A firearm certificate would attract a fee of £88 for the grant and £62 for renewal.

The value of certain firearms could reduce as a consequence. There would also be some limitations as to the availability of certain firearms as these could become subject to certificate controls which would place added restrictions as to who is legally entitled to possess/trade an antique firearm that is subject to control.

The consultation process will clarify which firearms on the Home Office obsolete calibre list will be affected by this proposal. The associated costs to business will be assessed prior to the introduction of secondary legislation.

We recognise that there may be some familiarisation costs due to the proposed changes to the Home Office obsolete calibre list. We are anticipating covering this aspect in more detail in the separate consultation impact assessment.

Criminal justice agencies

Increase in legitimate prosecutions: A legitimate prosecution is here defined as one that is triggered by the offender doing something blameworthy or harmful. While there is a benefit from bringing offenders to justice, there is an economic cost to the criminal justice system from doing so. Tighter legislation around antique firearms could potentially lead to an increase in legitimate prosecutions. This increase would lead to increased court time, more expert witness time and a potential increase in the number of prison sentences.

It is not possible to monetise the costs associated with these reforms as the exact revisions to the obsolete calibre list will not be established until after the consultation and the effect on prosecutions cannot be fully predicted.

Law enforcement

Additional burdens on the licensing system: The proposed revision of the obsolete calibre list could mean that a firearm previously considered an antique could, as a consequence of the revisions, require a certificate. This would place additional burdens on police firearms licensing teams. We are unable to assess the impact on the teams because we do not know the numbers of antique firearms that will be involved. We will be running a consultation on the content of the obsolete calibre list and this will help us to better estimate the impact on the police.

Training and familiarisation costs: The reforms to firearms law will require police officers to be notified of the changes to legislation. Discussions with the College of Policing suggest that additional training costs are expected to be minimal as relevant police officers will be notified through amendment to their existing training programmes.

Increased police time on legitimate prosecutions: By tightening existing legislation, the police will be better able to rely upon firearms law which, as described above, could lead to an increase in legitimate prosecutions. While the reforms should also clarify cases, increased police time would be spent on dealing with criminal cases involving firearms. It is not possible to know at this time how the level of prosecutions might be affected, and therefore any increase in police time cannot be quantified.

2b. Creating a new offence to criminalise those in possession of articles with intent to use them in the unlawful conversion of imitation firearms

Registered Firearms Dealers (RFDs)

Costs to business: The new offence targets persons who are in possession of articles with intent to use them to unlawfully convert imitation firearms, without legal entitlement as a Registered Firearms Dealer. There are therefore **no costs to business from this measure** as this measure exempts registered firearms dealers.

Criminal justice agencies

Prosecutions under the new offence: As well as an increase in legitimate prosecutions based on current offences, the creation of a new offence regarding the unlawful conversion of imitation firearms could also lead to an increase in prosecutions. It is not certain how many cases will be brought under the new offence, however MoJ has provided an estimate of the additional cost per prosecution, using the current offence in Section 6 of the Fraud Act 2006 as a proxy. It is assumed that 50% of cases are heard in a magistrates' court and 50% are heard in the Crown Court. The average custodial sentence length for a section 6 offence is nine months, however this modelling assumes that an offender serves half of their given custodial sentence.

The estimated cost to the criminal justice system per additional defendant proceeded against is £8,900 (2014/2015 costs). This cost is broken down as follows:

- Crown Prosecution Service: £600 per case.
- HM Courts and Tribunals Service: £1,600 per case.
- Legal Aid Agency: £900 per defendant.
- Prison costs: £3,600 per defendant.
- Probation costs: £2,100 per defendant.

All costs are weighted to account for the proportion of defendants tried in either a magistrates' court or the Crown Court. The cost is an estimated average cost of proceeding with a case from beginning to end (whether the offender is found guilty or not and accounting for the range of disposals possible). See annex A for more detail.

Training and familiarisation costs: Reforms to firearms law, including the creation of a new offence, will require some judicial training. However, costs are expected to be minimal, if any, as training would be incorporated within existing programmes.

Law enforcement

Training and familiarisation costs: The reforms to firearms law will require police officers to be trained accordingly. Discussions with the College of Policing suggest that training costs are expected to be minimal, if any, as relevant police officers will be trained through existing programmes.

For Business Impact Target purposes, this measure has an **EANCB of £0m**.

2c. Defining a 'component part'

Registered Firearms Dealers (RFDs)

Costs to business: The definition of a component part of a firearm is already contained in the Home Office Guide on Firearms Licensing Law and is widely referred to by certificate holders and the industry but there is currently no statutory definition of a component part of a firearm. As the component parts of a firearm are themselves subject to a licensing regime, we intend to legislate so that a definition is provided in (primary) legislation.

Secondary legislation will be introduced in order that the Secretary of State will have the power to amend the list of component parts by way of an affirmative order.

There would be **no costs to business from this measure**. This has been confirmed by the Gun Trade Association.

Criminal justice agencies

Increase in legitimate prosecutions: A legitimate prosecution is here defined as one that is triggered by the offender doing something blameworthy or harmful. While there is a benefit from bringing offenders to justice, there is an economic cost to the criminal justice system from doing so. Tighter legislation could potentially lead to an increase in legitimate prosecutions. This would lead to increased court time, more expert witness time and an increase in the number of prison sentences. It is not possible, at this point, to estimate any potential rise in prosecutions as a result of this proposal, and thereby any potential increase in costs.

Law enforcement

Increased police time on legitimate prosecutions: By tightening existing legislation, police will be better able to rely upon firearms law. This could lead to an increase in legitimate prosecutions. While the reforms should determine which cases should be prosecuted, it is possible that increased police time would be spent on dealing with criminal cases involving firearms. As explained above, it is not possible to know how the level of prosecutions would be affected and therefore the increase in police time cannot be quantified.

Training and familiarisation costs: The police refer widely to the definition of component part contained in the Home Office Guide on Firearms Licensing Law. There are therefore expected to be no additional costs as a result of this measure.

For Business Impact Target purposes, this measure has an **EANCB of £0m**.

2d. Defining lethality

Registered Firearms Dealers (RFDs)

Training and Familiarisation costs: The threshold of 1 joule as the determining factor in defining lethality is already present in the Home Office Guide on Firearms Licensing Law. Firearms manufacturers and registered firearms dealers work within the parameters of the Firearms Act, and therefore are already familiar with muzzle velocity thresholds and operate within them. Discussions with the Gun Trade Association reflect our view that there will be no familiarisation costs to consider as a result of this measure.

Airsoft retailers and skirmishers

Airsoft weapons fall above the one joule threshold which we propose to use to define lethality. We intend to apply an exemption for airsoft weapons, which are used for airsoft skirmish activities, so that this negates the requirement for this type of firearm to only be sold by registered firearms dealers. This is in response to concerns raised in the public consultation by the United Kingdom Airsoft Retailers Association and the United Kingdom Airsoft Players Union.

Criminal justice agencies

Increase in legitimate prosecutions: A legitimate prosecution is here defined as one that is triggered by the offender doing something blameworthy or harmful. While there is a benefit from bringing offenders to justice, there is an economic cost to the criminal justice system from doing so. Tighter legislation and the removal of any perceived ambiguity could potentially lead to an increase in legitimate prosecutions. This increase would lead to increased court time, more expert witness time and an increase in the number of prison sentences. As explained above, it is not possible to monetise the costs associated with these reforms as the effect on prosecutions cannot be fully predicted.

Law enforcement

Setting up an acceptable test of muzzle kinetic energy: Under this option, the suggestion by the Law Commission is that it would be necessary to formulate a standardised way of measuring muzzle kinetic energy to maintain consistency and that this should be included within the Home Office Guide on Firearms Licensing Law. Based on responses to their consultation, the Law Commission have suggested that the costs for setting up an appropriate test of muzzle kinetic energy would be negligible.

Training and familiarisation costs: Discussions with the College of Policing suggest that additional training costs are expected to be minimal as relevant police officers will be notified through amendment to their existing training programmes.

For Business Impact Target purposes, this measure has an **EANCB of £0m**.

BENEFITS

The public

Increased public safety: The first duty of the government is to maintain and preserve public safety, this is paramount. Law enforcement agencies have identified areas in firearms legislation that are being exploited by criminals and the reforms' proposed aim is to tackle these loopholes. Professor Peter Squires, in his substantial review of gun crime⁶, commented that legal and policy reform can have the effect of "significantly reducing year-on-year rates of recorded gun crime." With both the CPS and the police reacting positively to the proposals, the reforms are expected to increase public safety by reducing the number of deaths and wounds caused by firearms.

Proposals to address the priority areas identified through the Law Commission's scoping consultation will effectively close legislative loopholes and should prevent criminals from acquiring antique firearms to convert into live firing weapons.

The introduction of a new offence to criminalise those in possession of articles with intent to use them in the conversion of imitation firearms, will allow for the prosecution of those found to be in possession of articles with intent to use them in the unlawful conversion of imitation firearms much earlier and potentially before the firearms have been converted. There is currently nothing in law to deter a person from being in the process of unlawfully converting a firearm as they can currently only be charged once they have made a successful conversion - i.e. after the event. The new offence takes pre-emptive action to

⁶ P Squires, "Gun Crime in Global Contexts" (2014) 40.

ensure public safety and acts as a deterrence from being involved in the unlawful conversion of imitation firearms.

Antique firearms have been recovered in criminal circumstances on multiple occasions, some of which have resulted in injuries and fatalities. The Law Commission has identified loopholes in the current firearms legislation which has serious implications with regards to public safety. The exact impact of the proposed reforms on criminal activity involving firearms and the resulting fatalities and injuries cannot be reliably predicted. However it is possible to present the estimated costs associated with fatalities and injuries as illustrative of the benefits from implementing the reforms. Home Office estimates for the costs of crime⁷, uprated for inflation, give the economic and social costs of a homicide to be £1.9m while the total health-related cost of an injury, including both emotional and physical impacts, is estimated at £9,200. To give a sense of the current scale, the Law Commission has estimated that firearms within the scope of the reforms in this IA are responsible for approximately 2 fatalities and 140 serious injuries (i.e. those requiring hospital treatment) per year. These estimates are an aggregation of the annual fatality rates for the different firearms within scope which have been calculated using various statistics and data sources available⁸.

These estimates provide a total cost per year of approximately £5 million. While we cannot predict the change to the number of fatalities or injuries under this option, a scenario involving one fewer fatality and 5% fewer injuries in a year would lead to an annual saving of about £2 million.

Increased public confidence in the criminal justice system: Public confidence in the criminal justice system is severely undermined when defendants walk free because the criminal law is incomprehensible or outdated. It is further undermined when those who make every effort to comply with the law inadvertently commit an offence because the law is unduly complex. The reforms proposed in this option would reduce the occurrences of both of these outcomes and, therefore, further increase public confidence in the criminal justice system.

Registered Firearms Dealers (RFDs)

Increased certainty and clarity: The proposed reforms will provide much needed legal clarity around firearms which will benefit RFDs. By clarifying what is and, thus, what can be traded as an antique firearm, the risk of prosecution facing both dealers and customers is greatly diminished. The introduction of a definition of an antique firearm has been welcomed as part of the consultation by a significant number of businesses including the British Antique Dealers' Association and the Gun Trade Association.

Collectors of antique firearms

Increased certainty and clarity: The reforms are to provide legal clarity which ultimately benefits collectors. A collector may face imprisonment if they buy a weapon which a jury later considers not to fall within the antique exemption. The reforms introduce certainty for collectors without any need for them to significantly alter their existing practices given the reforms are mainly aimed at enshrining existing practice into law.

⁷ Home Office, *The Economic and Social Costs of Crime against Individuals and Households 2003/04* (30/05, 2005)

⁸ While the Law Commission IA also includes estimates relating to deactivated firearms, these have been excluded from the figures as they are out of the scope of this IA.

Criminal justice agencies

Decrease in “illegitimate” prosecutions: While the reforms could lead to an increase in *legitimate* prosecutions, they will likely lead to a decrease in “*illegitimate*” prosecutions. An “illegitimate” prosecution is here defined as one that is triggered by the offender having committed an offence due only to the complex nature of the law on firearms.

The introduction of a definition of antique firearm would likely lead to a decrease in “illegitimate” prosecutions because of the increased clarity of the criminal law. This fall would reduce costs to criminal justice system, with reduced court time, less expert witness time and a fall in the number of prison sentences.

As with the increase in legitimate prosecutions, it is not possible to monetise the benefits associated with these reforms as the effect on prosecutions cannot be fully predicted. Without a sense of the scale of current prosecutions for the different issues at hand, it is difficult to quantify the impact on future levels of prosecutions. In particular, it is difficult to predict how the increase in legitimate prosecutions will balance against the fall in illegitimate prosecutions. While there is a cost to bringing forward legitimate prosecutions, both the increase and the fall are ultimately benefits as they reflect justice being carried out as intended.

Shorter and less contentious cases: Providing clarity in the law for definitions outlined in the proposals is expected to reduce time spent in cases deliberating over definitions.

There has been some contention on the proposal to define lethality with the CPS and Council of HM Circuit Judges. However the Law Commission contends that, based on discussions with forensics experts, a test of muzzle kinetic energy would be relatively easy to set up and commonly accepted.

While the reforms would clearly not remove the need for expert witnesses, they would significantly reduce their time in court. Furthermore, by reducing the scope for disagreement, cases are likely to be less contentious and there could therefore also be fewer appeals. As explained above, limited data on current relevant firearms prosecutions means it is not possible to monetise these benefits.

Law enforcement

Reduced police time on “illegitimate” prosecutions: As explained above, the reforms would provide clarification which would result in fewer “illegitimate” prosecutions, therefore reducing the police time spent on these cases. The greater legal clarity will ensure that the police have a better understanding of which cases should be pursued, reducing the time spent on contentious cases and providing them with the certainty to enforce the law with confidence. As explained above, it is not possible to quantify this reduction in police time without a better sense of how the level of prosecutions would be affected.

F. Risks

OPTION 1 – is to make no changes (do nothing).

- i. Risk to public safety: To do nothing would place unacceptable risks to public safety. Law enforcement agencies have identified areas in our domestic firearms legislation that is

open to abuse by those intent on criminal activity. The review of firearms legislation by the Law Commission has identified areas within legislation which were causing unnecessary difficulties for law enforcement and legitimate holders of firearms. These two heavily intertwined factors show that firearms legislation must be clarified and simplified to ensure the law is easier to understand and use.

Separately, law enforcement has identified that criminals are exploiting potential legislative loopholes concerning antique firearms as this type of firearm has been used in crime (as detailed in the background section).

- ii. Law enforcement, criminal justice agencies (the police, Crown Prosecution Service and National Crime Agency), shooting organisations and the industry had each complained that firearms law is unclear and imposes unnecessary costs and burdens.
- iii. Undermines confidence of the public: Failure to define key terms in firearms legislation will lead to further difficulties for law enforcement to effectively investigate and prosecute alleged firearms offences leading to risks to public safety. Prospective prosecutions will be complex and costly for all concerned, including tax payers. Potential legislative loopholes will continue to be exploited by criminals and there will continue to be a lack of coherence for legitimate certificate holders, Registered Firearms Dealers and law enforcement agencies. Firearms legislation must keep pace with modern technological advances and potential legislative loopholes must be closed to prevent the law being abused by criminals.

OPTION 2 – is to amend firearms legislation.

There are a number of risks associated with amending firearms legislation as the amendments could be seen as being unfair to legitimate collectors.

- (i). Defining an ‘antique firearm’: Whilst this will remove legislative ambiguities and provide clarity for legitimate holders and collectors of antique firearms, the introduction of a definition, could lead to associated additional risks for collectors of antique firearms as the value of some firearms could diminish as they may need to be held on a suitably conditioned firearm certificate which would be unfair to legitimate collectors. Furthermore, some antique firearms may be omitted from the existing Home Office list of obsolete calibres as some will, in effect, become prohibited weapons and subject to certificate controls. In both scenarios, legitimate collectors could seek compensation. We will run a consultation exercise to better understand how our approach will impact on the antiques sector.
- (ii). Creating a new offence to criminalise those in possession of articles with intent to use them in the conversion of imitation firearms: The risk is that the offence is not used by the police and prosecutors. We will work with police and CPS to provide guidance to mitigate any concerns.
- (iii). Clarifying what is a ‘component part’: The risk of having a list in statute is that it may be difficult to amend if definitions need to change. We will be making provision for an order for the Secretary of State to amend if appropriate, for example based on changes in technology or the threat picture.

- (iv). Defining lethality to determine whether a weapon is controlled under the legislation:
The risk is that allowing an exemption for airsoft could be seen as inappropriate. The exemption for airsoft weapons would include safeguards to ensure it would be restricted to the permitted activities already specified within the Firearms Act.

G. Enforcement

The changes to firearms legislation will enable law enforcement and criminal justice agencies (the police, Crown Prosecution Service and National Crime Agency) to enforce firearms law with clarity and confidence. Costly legislative ambiguities and confusion will be removed and fewer firearms experts will need to be engaged to give opinion during court cases.

The police will continue to undertake the risk management and monitoring in relation to firearms licensing.

H. Summary and Recommendations

Option 2 is our preferred option. This will strengthen the current firearms legislation by defining antique firearms, lethality and component parts, and create a new offence to meet a gap in the law. Our decision to amend the legislation is supported by the evidence from the Law Commission review of firearms legislation and in the cases of lethality and component parts we already have the information in guidance and our approach is making technical changes to legislation. This option will also restrict the availability of antique firearms with the aim of reducing criminal use.

I. Implementation

Subject to parliamentary approval the Policing and Crime Bill is expected to gain Royal Assent by the end of November 2016. These provisions will be brought into force during 2017.

J. Monitoring and Evaluation

In order for us to better assess the impact the new measures will have on business and individuals trading in antique firearms, we intend seeking their views by holding a public consultation during the passage of the Policing and Crime Bill. The aim is that this will provide a baseline of information which we will then monitor in future years.

In successive years, the effectiveness of the new regime would be monitored by reviewing on an annual basis the use of antique and deactivated firearms used in crime and comparing with previous years to assess whether the legislation had made an impact on their use.

We will also be able to review through CPS data how often the new offence has been used and the success of prosecutions.

We will also seek views from businesses, trade, shooting organisations and law enforcement as set out in the feedback section below.

The first review will be a year after the legislation has been implemented (2018).

K. Feedback

We will seek views from law enforcement and stakeholders through informal engagement and a public survey 12 months after the implementation of all the new measures. This will be additional to the consultation on antiques which would have already taken place.

L. Small and Micro Business Assessment

Our view is that the proposals relating to antiques are likely to have an impact on business.

However we do not have sufficient information on the number of small and micro businesses that may be impacted by our approach to antiques. This is because the Firearms Act 1968 exempts antique firearms from the scope of firearms legislation. This effectively means that anyone is able to possess, acquire and sell antique firearms without the need to be registered with the police as a firearms dealer. As at 31 March 2015 there were 3,422 Registered Firearms Dealer certificates on issue in England and Wales. The Gun Trade Association estimates that 86% of dealers are small (under 4 employees). 11% are medium (4 - 10 employees) and 3% are large (11+ employees).

We are however unable to quantify how many of these dealers' trade also includes sales of antique firearms. As there is no requirement for sales of antique firearms to only be conducted by registered firearms dealers, some antiques dealers may also sell antique firearms as part of their day-to-day business activities. Additionally, it should be noted that a large number of transactions will also be conducted by individual owners at gun fairs.

As there is no regulatory process for antiques dealers we are unable to quantify how many dealers of this type also sell antique firearms as part of their business activities and we are unable to quantify how many antiques dealers there are. We have spoken to representatives of the Gun Trade Association, British Sports and Shooting Council, BASC and HBSA who have confirmed that the nature of the antiques trade makes it difficult to assess the number of businesses that sell antiques.

We therefore intend holding a public consultation, during the passage of the Policing and Crime Bill, to review the Home Office obsolete calibre list to define which firearms should continue to be specified on the obsolete calibre list and therefore not subject to certificate controls, and which firearms should be omitted and revert to certificate controls. As part of the consultation we will ask respondents about the size of their business and how their business is affected by the changes being made in respect of antique firearms and obsolete calibre ignition systems. The lists will be brought in by secondary legislation and we will provide a separate impact assessment covering the impact to business at that time.

In respect of airsoft retailers and introduction of the definition of lethality, as we are introducing an exemption for airsoft weapons, we are not expecting for there to be any adverse impact upon small and micro businesses trading in airsoft weapons. We will however review these arrangements as part of our annual review.

Family Test

We do not think a family test is suitable. We have considered the questions in the family test and our assessment is that the changes being proposed to the legislation will not have any impact at the level of the family.

Glossary

Cost per defendant: The cost per defendant is a cost per person proceeded against. It is a weighted cost that accounts for the proportion of defendants tried in the magistrates' and Crown Court, the proportion of offenders sentenced to each disposal and the average time those sentenced to a custodial sentence spend in prison. It tells you the average cost of a proceeding from the beginning of that proceeding to the end of the case (whether the offender is found guilty or not and accounting for the range of disposals possible).

Criminal Justice System: The CJS encompasses the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and HM Prison and Probation Services.

Crown Court: Deals with the more serious, triable either way or indictable cases, for example murder, rape and serious fraud/theft. In the Crown Court, whether the defendant is found guilty or not guilty is decided by a jury.

Disposal: The end result of a trial at court. In this publication the disposals of interest are sentences, but other disposals are possible, for example where there is no finding of guilt and the defendant is acquitted.

Indictable Only Offence: An offence that is triable only in the Crown Court; all proceedings will start in the magistrates' court but will be sent straight for trial in the Crown Court.

Magistrates' Court: Magistrates cannot normally order sentences of imprisonment that exceed six months (or 12 months for consecutive sentences), or fines exceeding £5,000. The magistrates' court deals with summary only offences. Some cases are triable-either-way in either magistrates' courts or the Crown Court.

Proceeding: The start of legal action brought against somebody charged with committing a criminal offence.

Summary Only Offence: An offence that is triable only in the magistrates' court; all proceedings will start and end in the magistrates' court.

Triable Either Way Offence: An offence that is triable in either the magistrates' court or Crown Court. Some proceedings will start and end in the magistrates' court whereas others will start in the magistrates' court but end in the Crown Court. In triable either way cases, defendants can elect to stand trial in the Crown Court or they can be sent for trial in the Crown Court because the offence is deemed serious enough.

ANNEX B: Progression of cases through the CJS⁹

Assumptions	Risks
<p>Proportion of cases tried in the magistrates' vs. the Crown Court</p> <ul style="list-style-type: none"> • The proportion of cases tried in the crown court is derived from the number of cases sent to the crown court for trial in any given year. 	<ul style="list-style-type: none"> • More defendants may be tried in the Crown Court where the costs of trials are more expensive.
<p>Proportion of defendants found guilty</p> <ul style="list-style-type: none"> • The proportion of defendants found guilty is calculated by taking the number of convictions as a proportion of all trials started. 	<ul style="list-style-type: none"> • More defendants will be convicted which could lead to higher costs. • If the number of trials started is different to the number of defendants sentenced, the figures would be different.
<p>Disposals given:</p> <ul style="list-style-type: none"> • The proportion of defendants given each disposal is calculated by taking the number given that disposal as a proportion of trials started. <p>Average custodial sentence length (ACSL):</p> <ul style="list-style-type: none"> • Average custodial sentence length excludes Life and Indeterminate sentences for all offences. • The exception is Murder, where the ACSL is assumed to be 30 years. <p>Post sentence supervision:</p> <ul style="list-style-type: none"> • Offenders given a custodial sentence of under 24 months will serve half of their sentence in custody and a minimum of 12 months on licence or post-sentence supervision as set out in the Offender Rehabilitation Act 2014. • It is assumed that the cost of this supervision would be equivalent to the cost for post release license. • It is assumed for murder that an offender spends 10 years on post release license. 	<ul style="list-style-type: none"> • That the ACSL given is longer / shorter, meaning costs would be higher / lower. • Actual costs of post sentence supervision may be lower than estimated.

⁹ All costs provided below have been rounded to the nearest £100 and are in 2013/14 prices.

Cost assumptions

CPS costs, advocacy costs:

- The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks).

Source: CPS 2014; MoJ internal analysis, 2014

- The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated.

HMCTS costs (magistrates' court):

To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,150 per sitting day in 2014/15 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2014-15. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.

Timings data for offence categories:

- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits.
- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits.
- Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.
- The timings are collection of data from February 2009. Any difference in these timings could influence costings.
- The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.
- Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).

	<p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p>HMCTS costs (Crown Court):</p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This is added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2014/15 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2014-15.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> •The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. •Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate. •The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. •Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences. <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> •HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.
<p>Legal Aid Costs:</p> <p><i>Cases in the magistrates' court</i></p> <ul style="list-style-type: none"> •It is assumed for the majority of the summary only and triable either way offences listed above that the eligibility rate for legal aid in the magistrates' court is 50%. The only exception is the offence of non-compliance with a notice to owner where the eligibility is assumed to be 5%. •The average cost per case is £500 and assumes that there is one defendant per 	<p><i>Magistrates' court</i></p> <ul style="list-style-type: none"> •Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings. •More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost. <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> •Assuming 100% eligibility for legal aid in the

<p>case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014 (Main tables, table 2.3).</p> <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> • It is assumed for the new offence that the eligibility rate for legal aid in the Crown Court is 100%. • We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2014/15 data as a proxy for the cost per defendant. <p>Source: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</p>	<p>Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</p> <ul style="list-style-type: none"> • There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.
<p>Prison costs:</p> <p>It is assumed that an offender serves half of their given custodial sentence. The exception to this is the offence of murder of a person aged 1 or over in which it is assumed that they serve 30 years imprisonment.</p> <ul style="list-style-type: none"> • The cost per prison place is approximately £25,300. <p>Source: NOMS management accounts addendum (2014/15)¹⁰.</p>	<ul style="list-style-type: none"> • The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.
<p>Probation costs:</p> <p>Post release licence costs:</p> <ul style="list-style-type: none"> • It is assumed that post release probation costs are approximately £2,700 per year in 2014/15 prices. <p>Community sentence costs:</p> <p>Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices.</p> <p>The probation costs are based on national</p>	<ul style="list-style-type: none"> • It is assumed that the cost of this supervision would be equivalent to the cost for post release license. Actual costs of post sentence supervision may be lower. • Costs reflect delivery by Probation Trusts prior to the restructuring and competition of probation services during 2014/15. • The costs of post sentence supervision will vary depending on whether offenders are managed by the NPS (National Probation Service- for high risk offenders) or the CRCs (Community Rehabilitation Companies- for lower risk offenders). There

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and updated in line with the GDP deflator. (<https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts>).

may also be costs to the NPS for production of pre-sentence reports to court and costs to prison, probation or through contracts such as Electronic Monitoring in relation to breach during the post-sentence supervision/licence period.

Source: MoJ internal analysis, 2013/14.