

Title: LASPO Lords Committee Stage Amendments IA No: Lead department or agency: Ministry of Justice Other departments or agencies: Crown Prosecution Service, Her Majesty's Courts & Tribunals Service, Legal Services Commission, National Offender Management Service	Impact Assessment (IA)		
	Date: 12/01/2011		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
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Summary: Intervention and Options		RPC Opinion: RPC Opinion Status	

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, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

Despite the ambition and determination of those working within the justice system, too many people re-offend and too much money is spent dealing with the consequences of high levels of re-offending. Government intervention is required to ensure punishments are robust and demanding and to reduce the level of re-offending. The sentencing framework requires simplification as it is complex, expensive and time-consuming to interpret and administer and is also difficult for the public to understand.

What are the policy objectives and the intended effects?

Our central objectives are to ensure offenders face robust and demanding punishments and to make the public safer by breaking the cycle of crime. The intended effects of these policies are to ensure that offenders: are punished effectively; and pay back to victims and society. The sentencing framework will seek to achieve a better balance across the purposes of sentencing to support these objectives, maintain fairness and trust in the system and improve value for money. The particular provisions subject to this Impact Assessment go towards robust punishment for hate crime and public protection in relation to bail decisions.

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

The policy options which have been considered in this Impact Assessment are:

- Option 0: do-nothing
- Bring forward government amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill on Hate Crime; and appeals against bail

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium 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 SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Hate crime amendments – make reforms to Section 146 and schedule 21 of the Criminal Justice Act (2003) to ensure that all five monitored strands of hate crime are treated equally under these particular provisions

FULL ECONOMIC ASSESSMENT

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

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

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

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

There may be some additional costs to NOMS if offenders sentenced to certain hate crimes receive longer sentences or minimum tariffs (in life sentence cases). Aggravating factors simply increase existing sentences and the number of hate crime offences is not considered to be large. We therefore consider that the impact of these changes on the prison population would be relatively minor.

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

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

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

Potential increased victim confidence in the criminal justice system

Key assumptions/sensitivities/risks

Discount rate (%)

While there are data on the instances of transgender motivated hate crimes and disability related hate crime convictions, there are no data available on the volume of convictions for transgender related hate crimes or the number of homicides motivated on the basis of the victim's disability or gender identity. We will continue to monitor the cross-CJS impact of all policies contained within the LASPO bill on an ongoing basis.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Appeals against bail – enable the CPS to appeal Crown Court bail decisions

FULL ECONOMIC ASSESSMENT

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

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

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

There may be potential cross-CJS costs arising from appealing bail decisions, these are:

- The CPS may incur costs of approx £25k
- The LSC may incur costs of between £15k and £25k

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

There may be some costs to NOMS through additional prison place requirements. These costs depend on the volume of successful appeals, the likelihood of the defendant being found guilty, whether the defendant would have received a custodial sentence in any case and the amount of time the defendant spends on remand. There may also be costs to HMCTS as judicial time would be required to hear appeals – live video links would be used to keep these costs to a minimum.

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

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

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

Where a decision is successfully appealed, the benefit from remanding the defendant to custody lies in avoiding the risk of further offending, absconding or interference with the course of justice.

Key assumptions/sensitivities/risks

Discount rate (%)

We have consulted with colleagues from the CPS on the number of cases in which they may decide to appeal a Crown Court bail decision. While subject to uncertainty, our best available estimate is approx 50 cases per year, although this may vary on a year-to-year basis.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Evidence Base

Introduction:

1. The Ministry of Justice (MoJ) published a consultation document entitled 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (Breaking the Cycle) on 7 December 2010. It set out proposals to reform how offenders are punished, sentenced and rehabilitated. The Government published its response to the consultation exercise in June 2011. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill was also published in June 2011. An impact assessment was published on 14th November 2011 on the sentencing components of the LASPO Bill to reflect the changes made during its passage through the House of Commons.
2. This impact assessment accompanies government amendments to the bill in the House of Lords in January 2012. This Impact Assessment is divided into two sections to reflect two of the amendments that the government is tabling in the Lords Committee Stage of the LASPO bill. These are:
 - Hate Crime; and
 - Appeals against bail
3. The Government aims to reform how offenders are punished, sentenced and rehabilitated in a way that delivers value for money and is consistent with the Spending Review obligations of the Ministry of Justice (MoJ).

Section one: hate crime

Background:

4. Hate crimes are crimes where the offender is motivated by, or demonstrates hostility towards, the victim on the basis of a personal characteristic, including race, sexual orientation, religion or belief, gender identity or disability. The sentences of those convicted of hate crimes are aggravated to reflect the increased seriousness of the offence; it is at the Judge's discretion how to apply aggravating factors to sentences given to each case.
5. Sections 145 and 146 of the Criminal Justice Act 2003 provide for statutory aggravating factors in sentencing for any offence where it is shown that the offender demonstrated hostility towards the victim on the basis of the victim's race, religion, disability or sexual orientation.
6. Schedule 21 provides guidance to the courts on determining tariffs for mandatory life sentences for murder (this is the minimum amount of time which must be served in prison before an offender can be considered for release on life licence by the Parole Board). Murders aggravated by race, religion or sexual orientation attract a 30 year starting point.

Organisations in scope of this proposal:

- HMCTS;
- NOMS;
- Victims;
- Offenders; and
- Members of the public

Problem under consideration:

7. The current provisions do not treat all five monitored strands of hate crime equally. Sections 145 and 146 provide aggravating factors for crimes motivated by race, religion or belief, disability or sexual orientation but not gender identity. In addition to this, schedule 21 provides a 30 year starting point for determining the tariff for a life sentence for murder where the offence is aggravated on the basis of race, religion or sexual orientation, but importantly not on the basis of

Rationale for intervention:

8. Government intervention is required to amend the law to ensure that all monitored strands of hate crime are treated equally under sections 145 and 146, and Schedule 21.

Policy objectives:

- To treat all five monitored strands of hate crime equally in relation to statutory aggravating factors in sentencing for any offence and in the starting point a murder case should attract where it is aggravated on the basis of race, religion, sexual orientation, disability or transgender;
- To send a strong message that hate crimes will not be tolerated; and
- To ensure that similar hate crimes should be punished in a similar way. The courts should already treat hate crime of any kind as an aggravating factor but the amendments should ensure that the courts sentence hate crime on a more consistent basis.

Option 0 – do-nothing

9. Under this option, the government would not seek to amend the Criminal Justice Act (2003) to account for these anomalies.
10. Whilst sentencing guidelines provide for an aggravating factor in sentencing where the offence is motivated by hostility towards a minority group, the current legislation is not consistent and there is the longstanding anomaly that murders aggravated by hostility on the basis of the victim's disability have a 15 year starting point whereas murders aggravated on the basis of race, religion and sexual orientation have a 30 year starting point. It is not defensible to leave this anomaly in place. We have explored the possibility of creating a generic hate crime provision but there are difficulties in describing which cases should, or should not, be covered with the risk of producing bad results in some cases or of hate crime categories proliferating to the point of meaninglessness.
11. As the do-nothing is compared against itself, its costs and benefits are necessarily zero.

Option 1 – amend primary legislation so that hate crimes motivated on the basis of gender identity or disability attract the same aggravating factors as other hate crimes

Description:

12. This option would:
 - amend section 146 of the Criminal Justice Act (2003) so that a statutory aggravating factor in sentencing would be applied to crimes motivated by hostility on the basis of the victim's gender identity; and
 - amend schedule 21 of the Criminal Justice Act (2003) so that the starting point for life sentences for murder would be 30 years for murders motivated by hostility on the basis of the victim's gender identity or disability

Costs:

13. More offenders convicted of hate crime motivated on the basis of gender identity would receive a longer sentence compared to present. While we acknowledge many of these crimes may go unreported, statistics for 2010 show that there were 357 transgender hate crime incidents recorded by police forces in England, Wales and Northern Ireland¹. While we can therefore estimate the scale of the problem, we are currently unable to specify how many of these reported incidents lead to successful convictions. Any such convictions are currently aggravated under sentencing guidelines but putting the transgender group under the statutory provisions may lead to more offences being reported and prosecuted.

¹ Hate Crime statistics from regional forces in England, Wales and Northern Ireland during the calendar year 2010, ACPO data

14. An offender convicted of murder motivated by hostility on the basis of gender identity or disability could receive a longer tariff than currently given that the starting point will be 30 years rather than 15 years, although courts already aggravate sentence, and therefore the tariff, for hate crimes. While there are estimates of the number of transgender hate crime incidents (see paragraph 13 above) and successful convictions for disability hate crimes², this data is not broken down specifically for homicide offences.
15. The impact on NOMS in terms of additional prison places depends on the proportion of these crimes which lead to convictions (which is currently unknown); and given that aggravating factors simply increase existing sentences, the length of sentences that these offenders currently receive. Taking these factors into consideration and that the volume of the affected hate crime offences is not large, we consider that the impact of these changes on the prison population would be relatively minor.
16. We will continue to monitor the cross-CJS impact of the policies contained within the LASPO bill on an ongoing basis.

Benefits:

17. These reforms would ensure that all monitored strands of hate crime are treated equally under these particular provisions. There may be some benefits in terms of increased victim confidence in the criminal justice system, and greater reporting of such crimes.

Section two: appeals against bail

Background:

18. In England and Wales, bail can be granted by the police or the court
19. The Bail Act 1976 set out the provisions in relation to bail. Under that Act there is a general presumption in favour of bail subject to certain exceptions (for example where there is a risk that a person may fail to surrender to custody). The LASPO Bill amends the 1976 Act by introducing a “no real prospect” test. Under this test a defendant charged with an offence, and has no real prospect of receiving a custodial sentence would be released on bail even if there is a risk that he may fail to surrender to custody.
20. The proposal to permit the prosecution to appeal against the decision of a Crown Court judge to grant bail is separate from the proposals in relation to the “no real prospect test” and will require amendments to be made to the Bail (Amendment) Act 1993.

Organisations in scope of this proposal:

- NOMS;
- HMCTS;
- LSC;
- Victims;
- Offenders; and
- Members of the public.

Problem under consideration:

21. At present, the prosecution can only appeal a decision by a magistrates’ court to grant bail. . The prosecution cannot appeal against the decision of the Crown Court to grant bail even if the prosecution believes that there is evidence of a risk to public safety.

Rationale for intervention:

22. The Government accepts that there may be rare instances in which an inappropriate bail decision is made by a Crown Court judge to grant bail to a defendant and that the need to protect the

² In 2009/10 CPS records show that there were 483 successful convictions for disability related hate crimes in England & Wales however data is not broken down specifically for homicide offences.

public requires that the prosecution should be permitted to challenge that decision by way of appeal to a High Court judge. The prosecution's decision to appeal a decision of Crown Court judge should not be done lightly.

Option 0 – do-nothing

23. Under the do-nothing scenario, the prosecution would continue to have no right to appeal against Crown Court decisions to grant bail, with the result that in very rare cases there may be a risk to the victim or public safety.

Option 1 – enable the prosecutor to appeal against bail decisions made by a Crown Court judge

Description:

24. Where the prosecution disagreed with a decision by a Crown Court judge to grant bail, the prosecution would have the right to appeal against that decision. This would only be permitted where the appeal was made almost immediately after the decision. In addition the appeal would be heard by a High Court judge within a very short time after the application by the prosecution. The defendant would be entitled to representation at the hearing but would not be entitled to a corresponding right of appeal against being refused bail.

Costs:

25. We assume that there will be very few occasions in which a prosecuting authority believes it is necessary to appeal against a Crown Court judge's bail decision. In order to ensure that decisions to appeal are carefully considered, guidance will be issued requiring that the decision to appeal should be made by a senior official in the prosecuting authority.
26. The number of appeals against bail decisions by Magistrates' Court is not known. Estimating the number of appeals against bail decisions by Crown Court judges is subject to a lot of uncertainty and would depend on the circumstances of each individual case. We have consulted with colleagues at the CPS (the prosecuting authority most likely to use this appeal mechanism) on the number of cases in which they may decide to appeal a Crown Court bail decision. While we cannot be certain of the number of cases in which this power will be used and the volume will vary on a year-to-year basis, the CPS expects the number of appeals to be low, at approx 50 appeals per year. On this basis, there would be costs to:
- The CPS of £25k based on a unit cost of approx £500 per appeal;
 - The LSC of £15k-£25k based on unit costs of between £300 to £500 per appeal;
 - HMCTS – judicial and court time would be used to hear appeals. Live video links would be used to keep these costs to a minimum; and
 - NOMS of additional prison places taken up by additional offenders on remand, compared to the status quo. These costs depend on the volume of successful appeals, the likelihood of the defendant being found guilty, whether the defendant would have received a custodial sentence in any case and the amount of time the defendant spends on remand. Given the number of these variables and the relatively small number of cases affected (approx 50), we have not monetised this impact.

Benefits:

27. Where a decision is successfully appealed, the benefit (which is not quantifiable) from the High Court remanding the defendant to custody lies in avoiding the risk of further offending, absconding or interference with the course of justice.