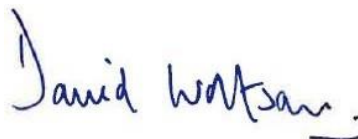


<p>Title: Legal Aid Means Test Review – Criminal</p> <p>IA No: MoJ021/2022</p> <p>RPC Reference No: N/A</p> <p>Lead department or agency: Ministry of Justice (MoJ)</p> <p>Other departments or agencies: Legal Aid Agency (LAA)</p>	<h1 style="margin: 0;">Impact Assessment (IA)</h1>
	<p>Date: 01/03/2022</p> <hr/> <p>Stage: Consultation</p> <hr/> <p>Source of intervention: Domestic</p> <hr/> <p>Type of measure: Secondary legislation</p> <hr/> <p>Contact for enquiries: legalaidmeanstestreview@justice.gov.uk</p>

Summary: Intervention and Options			RPC Opinion: N/A		
Cost of Preferred (or more likely) Option (in 2022 prices)					
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Not a Regulatory Provision		
N/A	N/A	N/A			
<p>What is the problem under consideration? Why is government action or intervention necessary?</p> <p>Entitlement to legal aid is means tested to focus taxpayer resources on those that need it most. The income and capital thresholds for legal aid eligibility have not been updated for more than a decade, meaning the proportion of the population eligible for legal aid has fallen year on year. Moreover, the legal aid means test needs updating in a number of areas to ensure consistency with other government approaches to means testing. In response to these issues, the Means Test Review has proposed changes that would increase access to legal aid in England and Wales, so helping to ensure access to justice. Government intervention is required because the legal aid means test is governed by secondary legislation.</p>					
<p>What are the policy objectives of the action or intervention and the intended effects?</p> <p>The intended outcomes of the review are to ensure that the means test is fair, efficient, and sustainable. This will help ensure individuals can access legal services when they need them and secure access to justice. This can be measured by the proportion of the population that is eligible for legal aid, which we expect to increase under our proposals.</p>					
<p>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</p> <p>The following options are assessed in this Impact Assessment:</p> <ul style="list-style-type: none"> • Option 0/do nothing: Continue with the existing test, including the thresholds and continuing to passport all recipients of Universal Credit (UC), as it is further rolled out. • Option 1: Increase the income thresholds for legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of Universal Credit (UC). <p>Any change to the means test requires regulation. We considered alternative non-legislative options but none met our policy aims. Due to the transition of the benefits regime from legacy benefits to UC, Option 1 is evaluated against two baselines. Baseline 1 is one where all benefit recipients are still on their legacy benefit while Baseline 2 is where all benefit recipients have been transitioned to UC. The following option summary sheets therefore assess the impact of Option 1 against both of the respective baselines. In reality, the current legal aid eligibility of the England and Wales population lies somewhere between these two baselines.</p>					
<p>Will the policy be reviewed? Yes. If applicable, set review date: June 2022, when consultation responses have been received,</p>					
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro N/A	Small N/A	Medium N/A	Large N/A
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0		Non-traded: 0

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible:



Date: 10 March 2022

Option 1 Baseline 1 Summary: Analysis & Evidence

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant		Total Cost (Present Value)
Low					
High					
Best Estimate	2	2	11-19		N/A
Description and scale of key monetised costs by 'main affected groups'					
<p>There would be an additional steady state annual cost to the Legal Aid fund of £5m-£10m compared to Baseline 1. There would be an additional cost to clients of around £5m-£8m per year, although these costs won't be fully realised for many years. There would be additional administration costs to the Legal Aid Agency (LAA) of around £0.4m per year. The LAA would need to process around 17,000 additional magistrates' courts claims per year, and 200 Crown Court claims per year. There would also be a one-off cost to the LAA of implementing the necessary IT, training, and guidance changes estimated at around £2m. Providers would need to do additional administrative work for the additional volumes and complexity (in collecting evidence and process applications), along with other administrative burdens. This is estimated to cost around £1m.</p>					
Other key non-monetised costs by 'main affected groups'					
<p>Criminal legal aid providers who also conduct private criminal work along with providers that exclusively undertake private criminal work may have a reduction in the amount of private work available to them, as some of their client base would now become eligible for legal aid when they were previously ineligible.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant		Total Benefit (Present Value)
Low					
High					
Best Estimate			13-17		N/A
Description and scale of key monetised benefits by 'main affected groups'					
<p>Clients who currently pay income contributions towards their Crown Court legal aid would be likely to pay no or smaller contributions under this option. This would provide them with a benefit of £3m. There would be clients in the magistrates' court and Crown Court who benefit because they previously paid their legal costs privately (as ineligible for legal aid) but who would become eligible for contributory or non-contributory legal aid. Criminal legal aid providers would get a significant amount of additional work as a result of the changes, providing them with an estimated £10m - £14m of additional income.</p>					
Other key non-monetised benefits by 'main affected groups'					
<p>Under the current means test, some clients decide to be unrepresented due to being ineligible for legal aid. Under the new proposals, if they become eligible, they would benefit from having legal representation.</p>					
Key assumptions/sensitivities/risks				Discount rate	N/A
<p>The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.</p> <ul style="list-style-type: none"> - Adults in the population who become eligible for legal aid would take it up at a similar rate to those who of a similar age, sex and who have the highest capital/income of those already eligible. - Any changes that arise as a result of increased access to legal aid, is assumed to amount to a transfer between the LAA and legal aid providers and, as such, a net present value (NPV) is not included. - The impacts of the ongoing Criminal Legal Aid Review have not been built into the costings. An increase in criminal fees is likely to increase the potential costs of changing the means test. 					

BUSINESS ASSESSMENT (Option 1)

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

Option 1 Baseline 2 Summary: Analysis & Evidence

2

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: N/A	High: N/A	Best Estimate: N/A	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant		Total Cost (Present Value)	
Low						
High						
Best Estimate	2	2	8-13		N/A	
Description and scale of key monetised costs by 'main affected groups'						
<p>There would be an additional steady state annual cost to the Legal Aid fund of £-2m to £4m compared to Baseline 2. There would be an additional cost to clients of around £7m-£11m per year, although these costs won't be fully realised for many years. There would be additional administration costs to the Legal Aid Agency (LAA) of around £0.3m per year. The LAA would need to process around 11,000 additional magistrates' courts claims per year, and 200 Crown Court claims per year. There would also be a one-off cost to the LAA of implementing the necessary IT, training, and guidance changes estimated at around £2m. Providers would need to do additional administrative work for the additional volumes and complexity (in collecting evidence and process applications), along with other administrative burdens. This is estimated to cost around £1m.</p>						
Other key non-monetised costs by 'main affected groups'						
<p>Criminal legal aid providers who also provide private criminal work along with providers that exclusively undertake private work may have a reduction in the amount of private work available to them, as some of their client base would now become eligible for legal aid when they were previously ineligible.</p>						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant		Total Benefit (Present Value)	
Low						
High						
Best Estimate			9-13		N/A	
Description and scale of key monetised benefits by 'main affected groups'						
<p>Clients who currently pay income contributions towards their Crown Court legal aid would be likely to pay no or smaller contributions following the implementation of our proposals. This would provide them with a benefit of £2m. There would be clients in the magistrates' and Crown Court who would benefit because they previously paid their legal costs privately (as ineligible for legal aid) but who would become eligible for contributory or non-contributory legal aid. Criminal legal aid providers would get a significant amount of additional work as a result of the changes, providing them with an estimated £7m - £11m of additional income.</p>						
Other key non-monetised benefits by 'main affected groups'						
<p>Under the current means test, some clients decide to be unrepresented due to being ineligible for legal aid. Under the new proposals, if they become eligible, they would benefit from having legal representation.</p>						
Key assumptions/sensitivities/risks					Discount rate	N/A
<p>The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.</p> <ul style="list-style-type: none"> - Adults in the population who become eligible for legal aid would take it up at a similar rate to those who of a similar age, sex and who have the highest capital/income of those already eligible. - Any changes that arise as a result of increased access to legal aid, is assumed to amount to a transfer between the LAA and legal aid providers and, as such, a net present value (NPV) is not included. - The impacts of the ongoing Criminal Legal Aid Review have not been built into the costings. An increase in criminal fees is likely to increase the potential costs of changing the means test. 						

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base

Background

1. Access to justice is a fundamental principle underpinning the rule of law; for access to justice to be effective, we must have a legal aid system which is accessible to those who need it. Legal aid is available in both civil and criminal cases. Criminal legal aid covers criminal advice and assistance and advocacy assistance and is available for a range of criminal matters, spanning pre-charge to post-conviction proceedings.
2. Means testing has played a role in the legal aid system for a very long time, for good reasons; it is important to focus taxpayer resources on those who need them most, rather than on those who can afford to pay for private legal advice and representation.
3. The criminal means test has two income tests with separate income thresholds for each. The gross income test is conducted first, followed by the disposable income test. The income and capital thresholds have, however, not been updated (increased in value) for more than a decade. This means that the proportion of the population eligible for legal aid is falling year on year. It also means that the thresholds for eligibility are worth less in real terms than at the time they were introduced, so individuals who are ineligible for legal aid are likely to have less money available to spend on legal services than they would have at the time the thresholds were introduced. It is important that the thresholds are set at the right level to help ensure individuals can access legal services when they need them.
4. Alongside income and capital thresholds, the passporting mechanism is an important element of the legal aid means test. It allows people in receipt of certain Department for Work and Pensions (DWP) means-tested benefits to be automatically deemed eligible for non-contributory legal aid on the basis of income (although, for civil legal aid, this is subject to a capital assessment).
5. Historically, 'out-of-work benefits' have been used to passport individuals to ensure that legal aid is targeted to those in most financial need. Passporting is used to assess legal aid eligibility so that financial information already collected from benefits recipients can in effect be used again, although the financial information itself is not shared – just the passporting status. This is an attempt to minimise the administrative burden for both households and government. The Crown Court means test also currently passports through the capital means assessment; and therefore, defendants in receipt of relevant passported benefits do not have to make a capital contribution if convicted.
6. The Magistrates' Test is an in-or-out test where applicants are either eligible for non-contributory legal aid or ineligible for legal aid. The Crown Court test offers both non-contributory legal aid and contributory legal aid, where applicants pay towards some of their legal costs.
7. The Means Test Review has considered the legal aid means tests in the round, including not only the income and capital thresholds for legal aid eligibility, but also wider eligibility criteria in relation to means (including benefits passporting), and the income and capital contributions potentially payable towards the costs of representation in civil and family

matters and at the Crown Court. As far as possible, we have revisited the existing rationales for our approach in these areas and further developed these where appropriate.

8. Improving legal aid eligibility would mean that individuals can resolve their legal problems while maintaining a basic standard of living. Individuals who at present narrowly fail the means test and can only access legal representation privately may face significant costs, as can those who have an unmet legal need. Often, those affected report having to forego material and social necessities during the period in question.
9. Increasing access to legal aid will increase volumes of legal aid spend, therefore potentially improving the viability of legal aid providers (most of which are SMEs) across England and Wales, particularly in locations and areas of legal aid practice which are currently undersupplied.
10. The Means Test Review has not considered the merits and interests of justice tests for legal aid eligibility, the legal aid fee schemes or which areas are in scope of legal aid.
11. The impacts of the ongoing Criminal Legal Aid Review, which is looking at the Criminal Legal Aid fee schemes and market, have not been built into the costings. An increase in criminal fees is likely to increase the potential costs of changing the means test.
12. This IA covers the impacts of criminal legal aid means test proposals. There is a separate IA that covers the civil legal aid means test proposal impacts.

Rationale and Policy Objectives

13. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
14. The underlying rationale for intervening in this market is for reasons of equity. It is the intention of the Means Test Review to implement a policy which treats people equally and delivers fair outcomes, whether they are in receipt of benefits or not, as well as ensuring that government resources are targeted at those who need it most, to deliver public value and economic efficiency.
15. The approach of the Means Test Review has been to look at each element of the legal aid means test and ensure that there is a robust rationale for where we set eligibility limits and make allowances and disregards to capital and income. This approach ensures we also achieve economic efficiency and value for money to the taxpayer, while achieving our equity objectives. The rationale for each policy element is set out in the consultation document. We have also stated that we will review the income and capital thresholds for legal aid, with the first review within 3-5 years of the new means test coming into operation. This will help to ensure the means test secures access to justice in the long-term.

16. The associated policy objectives are to support access to justice by ensuring that legal aid is available to those who are most in need while also ensuring that those who are able to contribute towards their legal costs do so.
17. Greater access to criminal legal aid in England and Wales would help ensure that those charged with a criminal offence, or in need of advice or advocacy assistance, can access legal representation when appropriate, and that any required income contribution is affordable. This would help ensure access to justice.

Affected Stakeholder Groups, Organisations and Sectors

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

Options under Consideration

19. The following options are assessed in this IA:
 - **Option 0/do nothing:** Continue with the existing test, including the thresholds and continuing to passport all recipients of Universal Credit (UC), as it is further rolled out.
 - **Option 1:** Increase the income thresholds for legal aid based on an assessment of the amount of income people need to cover essential living costs. Continue to passport all recipients of UC.
20. Option 1 is preferred as it best meets the policy objectives.

Option 0/Do nothing

21. Under this option the existing test thresholds would remain, and all recipients of UC would be passported as it is further rolled out.
22. Under this option, and because the income and capital thresholds for legal aid eligibility have not been updated for more than a decade, the proportion of the population eligible for legal aid (not in receipt of UC) would continue to fall. It would also mean that the thresholds for eligibility would continue to be worth less in real terms than at the time they were

introduced, so individuals who are ineligible for legal aid would have less money available to spend on legal services than they would have at the time the thresholds were introduced.

23. There would also be an equity impact associated with Option 0 as those in receipt of UC would be eligible for legal aid whereas those on similar incomes not in receipt of UC would not be. This is because UC is awarded to people on much higher incomes than our current eligibility limits.
24. In summary, under Option 0 fewer people would be able to access legal aid, and more people who are ineligible for legal aid would be unable to afford legal services.

Option 1

25. Under this option, the following changes would be made to the criminal means test:
- The cost of living allowance would be updated.
 - The £37,500 upper disposable income threshold for Crown Court test would be removed.
 - Homeowners in receipt of passporting benefits who are convicted in the Crown Court would become subject to capital assessment in the same way as non-passported legal aid recipients.
 - The magistrates' test gross and disposable income thresholds would be increased.
 - The Crown Court income contributions would be reviewed.
 - The Criminal Advice and Assistance and Advocacy Assistance means tests would be aligned with the proposed means test for Civil Legal Help and Controlled Work.
26. The Cost of Living Allowance uses median household expenditure (as captured by the annual Office of National Statistics (ONS) living costs survey) on a range of items, including all spending deemed essential but excluding alcohol and tobacco, restaurants and hotels, and culture and recreation. This enables an assessment into how much income individuals need to cover their essential living costs before they are able to contribute anything towards their legal costs. The current fixed cost of living allowance is £5,676 per year for a single person.
27. There is currently an upper disposable income threshold for the Crown Court test set at £37,500. If a defendant has applied for legal aid but has been found ineligible due to their disposable income being above the upper threshold and is acquitted, they are entitled to a partial refund of their private defence costs, via a Defendant's Cost Order (DCO), based on legal aid rates rather than what they paid privately.
28. Some concerns have been raised about this approach, as a defendant at the Crown Court who has been acquitted of a crime may nevertheless find themselves out of pocket, due to the discrepancy between the private legal fees they have paid for their defence and the refund they receive at (typically lower) legal aid rates. Therefore, we are proposing to remove the upper disposable income threshold meaning that all defendants, whatever their means, would be entitled to contributory legal aided representation as a minimum.
29. There is no capital eligibility assessment for legal aid at the Crown or magistrates' court. However, convicted defendants at the Crown Court may be required to make a contribution

towards their legal aid costs from any capital assets over £30,000 (including equity in property as well as liquid assets). Currently, convicted defendants in receipt of a passporting benefit (including UC) are passported through the capital assessment in the Crown Court and do not have to make a capital contribution. We propose that convicted defendants in receipt of passporting benefits who do own property would undergo a full capital means assessment (of their property and any other capital) and would be required to contribute towards their legal aid where they have capital above the threshold of £30,000.

30. The current magistrates' court means test came into force in 2006 and the income thresholds have not been updated since 2008. We propose to uprate the gross income thresholds and update the disposable income allowance to twice the typical private fee for the magistrates' test.
31. The structure of the Crown Court income contribution has been reviewed and Option 1 would implement: i) a new minimum contribution of £100 per month, ii) a new 3-tiered contribution rate system that would replace the current 90% contribution rate, iii) the maximum number of months that a defendant would contribute would rise from 6 months to 18 months.
32. We are proposing to make both the advice and assistance and advocacy assistance tests the same and align them with the proposed means test for civil legal help and controlled work.
33. Across the whole suite of means test changes, we plan to implement the changes to civil legal aid first, followed by those for criminal legal aid. This would involve laying secondary legislation and changing the published guidance on means testing. Once the regulations have come into force, the LAA would be responsible for the ongoing delivery of means testing for legal aid.
34. As part of our transitional arrangements, defendants who are granted contributory legal aid at the Crown Court before the new changes are introduced will have the option to apply for a reassessment under the new rules once they come into force; this includes reassessment of their liability to pay an income contribution. The outcome of any reassessment under the new rules will not apply retrospectively; this means that any income contributions which fell due for payment or were paid under the pre-implementation rules will be unaffected.

Cost and Benefit Analysis

35. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
36. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. The government's approach to IAs places a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised, which might include how the policy impacts differently on particular groups of society or changes in equity and fairness.

37. In IAs, the impacts of the options considered are normally compared to the 'do nothing' baseline. In this IA, however, two passporting baselines have been used to measure the impacts of Option 1 and the analysis in this section explores the impacts against both baselines. Paragraphs 48–53 explain in more detail why this approach has been used.
38. While it is normal to use real prices in IAs, in this IA the ongoing costs and benefits are presented on a steady state annual basis and are in nominal prices (for the price year 2021–22). Costs are not presented in real terms in legal aid primarily because fees are not increased in line with inflation and also due to the uncertainty around volumes, court sitting days and other related policies.
39. One-off digital costs are assumed to be incurred in the financial years 2022–23 and 2023–24 and are also presented in nominal prices.
40. No optimism bias (OB) is applied to any fund or administrative costs or benefits as the steady state range presented attempts to capture the uncertainty in the underlying modelling, but OB has been applied to the digital costs.
41. Unless otherwise stated, the quantitative estimates in this IA have been rounded as follows: financial estimates have been rounded to the nearest £100,000 for estimates below £1m, and to the nearest £1m for estimates of £1m or more. Non-financial estimates have been rounded to the nearest 100. This rounding methodology does not apply to figures quoted from legislation. The components in tables may not sum to the total due to rounding.
42. Any changes that arise as a result of increased access to legal aid are assumed to amount to a transfer between the LAA and legal aid providers and, as such, a net present value (NPV) is not included.

Methodology

Modelling Approach

43. Estimating the impacts of significant means test changes is complex and uncertain. In order to assess the options discussed in this IA, the Ministry of Justice has developed simulation models which provide the capabilities to estimate these impacts, including:
 - the change in legal aid fund spend
 - the change in legal aid certificate volumes
 - an assessment of the adults and households in the population who would experience a change in legal aid eligibility outcome
44. The simulation models use both the Family Resources Survey (FRS) and DWP Policy Simulation Model data to provide an estimate of the future circumstances of households in England & Wales, including their financial and demographic characteristics. This data can be used to provide indicative estimates of the population's legal aid eligibility under the current means test. Using data on real legal aid grants, the model then calculates and attaches an estimate of the rate at which eligible people take up legal aid currently, depending on their age, sex and levels of income.

45. The models then repeat a similar process to estimate the number of adults in the population that would become eligible for legal aid under a new means test. The model then uses the previously derived take-up rate calculations to assess how the newly eligible population will take up legal aid.
46. By applying average gross cost assumptions and estimates for the amount of contributions individuals will pay (in the Crown Court), we can further estimate the cost impacts to the legal aid fund.
47. There are some policy changes that cannot be modelled using the above approach due to data limitations, for example, changes to the advocacy assistance, advice and assistance, and sentencing and appeals means tests. The costs of these policies are therefore estimated using more high-level approaches. Annex B covers this in more detail.

The Baseline

48. In 2013 we introduced a policy of passporting all UC recipients through the income assessment, as an interim measure until a new scheme for passporting UC recipients could be devised.
49. However, this interim measure has become a longer-term position where many more claimants have moved onto UC. This includes those in work who would have been in receipt of housing benefit or tax credits, and would not have previously been income passported for legal aid purposes.
50. This is important to note when setting a baseline because the current benefits system is in transition, moving the recipients of legacy benefits to UC. It is therefore difficult to set a fixed current baseline for the Means Test Review because the impact of passporting all recipients on UC (our current policy) is changing constantly.
51. As such, we have estimated eligibility against two baselines using population data based on 22/23 forecast financials. The first baseline is based on the legacy system of benefits and the second one assumes that UC is fully rolled out to everyone. The following summary should make this clear:

Baseline 1: Assumes that all benefit recipients are still on their legacy benefit, and we therefore passport those who are entitled to income-based Job Seekers Allowance (JSA), income-based Employment and Support Allowance (ESA), Income Support (IS) and the Guarantee element of Pension Credit.

Baseline 2: Assumes that all legacy benefit recipients are transitioned to UC (including legacy recipients of in-work benefits such as tax credits), and that all of these recipients are passported through the income test.

52. The first of these baselines demonstrates the 'benefit' to the population of the changes proposed to the legal aid means assessment, against our pre UC position; the second of these baselines demonstrates the benefit of changes to the means test from a position where all individuals have been transitioned to UC.
53. As, in reality, our baseline is somewhere between these two states, the analysis against a legacy baseline (Baseline 1) will overestimate the number of those benefitting whereas

assessing the impacts against a UC baseline (Baseline 2) will underestimate the number of those benefitting.

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

Baseline 1

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

Costs of Option 1

Legal Aid Clients

55. A small number of legal aid clients would bear a cost as a result of the option 1 proposals. The costs would arise where a client's eligibility status changes from being eligible for legal aid to ineligible, or where the client moves from non-contributory to contributory legal aid. Our estimates suggest that a negligible number of magistrates' court clients and around 2,000 Crown Court clients would see such a change. At steady state, this would result in an increased cost to clients of around £5-8m, although these costs would not be realised for many years because the main effect is on convicted clients with property assets, where a charge could be placed on the property and redeemed when it is sold.

Criminal Legal Aid Providers

56. There would be costs for criminal legal aid providers for completing and submitting additional applications for assessments. We do not hold data on provider administrative work, but for the purposes of this IA we have derived an illustration of what the impacts may look like, and we would welcome feedback regarding the assumptions and calculation made. This illustration suggests that the additional administrative costs may accrue to a total of around £1m per year, but some of this would be paid for by additional legal aid payments. This illustration can be found in Annex A.

57. Criminal legal aid providers who currently undertake private work, along with providers who exclusively undertake private work may lose out from Option 1 if their clients now take up legal aid instead such that either i) clients decide to use an alternative provider who offers legal aid, or ii) clients who would previously have paid privately would now be entitled to legal aid, reducing the fee available to the provider.

The LAA

58. Under Option 1, the increase in annual cost to the Legal Aid fund is expected to be £5m - £10m per annum, once in steady state. There would also be additional LAA administration costs as a result of this option, estimated to be £0.4m per year. This LAA would need to

process an increased level of claims, anticipated to rise by 17,000 magistrates' courts claims per year, and around 200 Crown Court claims. There would be one-off costs to the LAA of around £2m to cover the IT changes required for the new means testing arrangements, but this includes changes to the civil means test too and it is difficult to separate these.

Benefits of Option 1

Legal Aid Clients

59. A considerable number of people would benefit as a result of the Option 1 proposals for magistrates' and Crown Court assessment changes (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance areas). This is because the impacts of Option 1 would result in them enjoying an improved outcome from the means test, e.g. their eligibility status may change from ineligible to eligible.
60. The extent of how people benefit varies widely, some people may have previously been ineligible for legal aid altogether and under Option 1 will be eligible for contributory or non-contributory legal aid; whereas some people may only benefit from making a small saving on the contributions they make.
61. Looking at those who move from being ineligible to eligible, we estimate that around 15,000 to 22,000 people would benefit annually in the magistrates' court and 100 to 300 people in the Crown Court. Those that benefit overall (including for Advocacy Assistance, Sentences & Appeals and Advice & Assistance), would receive estimated additional legal aid services to the value of £10m-£14m.
62. In addition to the 100 to 300 people who would benefit by becoming newly eligible at the Crown Court, between 7,000 and 11,000 contributory legal aid clients would see their overall contributions decrease (there are no contributions in the magistrates' court). This would save clients £2m-£5m in income contributions.

Criminal Legal Aid Providers

63. As a result of the changes, criminal legal aid providers would have additional funded work through the increase in volumes of magistrates' and Crown Court cases (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance). Criminal legal aid providers are estimated to receive £10m-£14m in additional funded work.

Net Impact

64. The steady state net cost to the Legal Aid fund would be £5m-£10m per year, which is made up of the £10m-£14m in funding for providers for the additional legal aid volumes plus the £2m-£5m cost from reductions to contributions, less the £5m-£8m additional income from capital contributions at steady state. Table 1 below shows more details of the steady state cost impacts to the Legal Aid fund for Option 1 under Baseline 1.
65. Legal aid clients would see a correspondingly net benefit of £5m-£10m, from the increase of £10m-£14m additional legal aid services available, plus £2m-£5m saving from reduced contributions for some clients, less the steady state cost to clients of £5m-£8m from capital contributions.
66. Overall, criminal legal aid providers would see a small increase in administrative costs but would benefit from £10m-£14m of additional funded work.

67. Table 1 shows the estimated Legal Aid fund spend at steady state, split by the areas of criminal legal aid that Option 1 covers. There would be additional administration costs for the LAA as a result of this option, estimated to be around £0.4m per annum.

Table 1: Annual steady state net additional spending by type of criminal legal aid £m

	Additional Spend
Crown Court	-£3m to -£2m
Magistrates'	£6m - £10m
Advice and Assistance	£0.3m - £0.5m
Advocacy Assistance	£0.3m - £0.5m
Sentences and Appeals	£0.8m - £1m
Total*	£5m - £10m

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

68. The proposals for option 1 would result in a net saving of around £2m - £3m in the Crown Court, with the savings from the change to the post-conviction capital assessment exceeding the cost of the income test changes. The proposed changes to the magistrates' test are estimated to cost around £6m-£10m at steady state due to the uplifting of the income test thresholds. Costs to other areas of criminal legal aid are estimated to total around £2m.

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

Baseline 1: Further Analysis

Analytical Scope

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

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

Population Eligibility

72. Using the population data we can estimate the adult population's entitlement to legal aid under the current means test where we assume that legacy benefits were in place (Baseline 1). Please note, we are not able to understand the populations impacts for the policies, as mentioned previously, where we have limited data (these can be found in more detail in Annex B).The tables below estimate the breakdown of eligibility for magistrates' court and Crown Court legal aid, where an additional split is applied in the Crown Court to show the

proportion of the population that would be required to pay a capital contribution (i.e. having over £30k of disposable capital) if they were convicted.

Table 2: The adult population eligibility in the magistrates' court, under a pre-UC baseline (baseline 1)

Eligibility outcome	Income test
Non-contributory	28%
Contributory	0%
Ineligible	72%
Total	100%

Table 3: The adult population eligibility at the Crown Court, under a pre-UC baseline (baseline 1)

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

73. The analysis has also been replicated based on the future proposed means test under option 1 (see tables 4 and 5). In the Crown Court, everybody would be eligible for legal aid due to the removal of the £37,500 threshold, compared to 80% of the population under a pre-UC baseline. A larger proportion of the population would be entitled to non-contributory legal aid based on the income test (37% compared to 29% in the baseline).

74. However, Option 1 proposes that those who are income passported would not be passported through the capital test (applied at the end of the case if the defendant is convicted) if they are a homeowner, and this increases the number of people who would be expected to pay capital contributions at the end of the case. In the magistrates' court a larger proportion of the population would be entitled to non-contributory legal aid (rising from 28% to 39%), mainly due to the increase in the disposable income threshold and the updated cost of living allowance.

Table 4: The adult population eligibility for the magistrates' court test under the Option 1 means test

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

Table 5: The adult population eligibility to the Crown Court test under the Option 1 means test

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

Cost Breakdown

75. Option 1 proposes a considerable number of changes to the criminal means tests. Below, we provide a breakdown of how the total legal aid fund impacts are disaggregated between the different components of the means test changes. These costs use the mid-point of the estimated range of steady state impacts but the uncertainty around all the figures should be taken into consideration.

76. Changes to individual components of the means test can interact with other parts of the means test. Therefore, the below tables are hierarchical, such that components are assumed to be implemented in top to bottom order. For example, when considering the impacts of changing the contributions system, it is assumed that the proposed changes to the income thresholds part of the test have already been implemented.

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

Component	Cost (£m)
Income test	8
Passporting	1
Advocacy Assistance	0.4
Advice and Assistance	0.4

Sentences and Appeals	1
Total	11

Table 7: Impact breakdown by means test component in the Crown Court (to the nearest £m)

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

77. The tables above show that the changes to the gross and disposable income tests for both magistrates' and Crown Court are by far the most impactful of all the changes (£11m). For the magistrates' court, this is driven by the number of adults in the population that we estimate would become eligible as a result, whereas in the Crown Court the driver is both the impact of removing the £37,500 threshold, and the increase in the cost of living allowance, which means that some legal aid recipients would pay reduced or no contributions.
78. The changes to the Crown Court contributions policy include; the introduction of the new tiered income contributions system, the reduction of the minimum monthly income contribution (anyone who is calculated to have less than £100 monthly contributions would not have to pay any contributions, compared to the current £250), and the change in the maximum months of contributions from 6 months to 18. These would amount to a net cost of £1m per year to the legal aid fund.
79. Since we are comparing against a legacy passporting test, there would be passporting costs when we passport all individuals on UC. In the magistrates' court test, the costs would be relatively small (£1m) because those on UC would very often get legal aid through the full means test. However, for the Crown Court test, the passporting costs cover both the income and capital passporting changes. There would be a small cost to passporting all individuals on UC through the income test, but the removal of capital passporting for all homeowners that are on UC would be far more significant, resulting in an overall saving of £6m.
80. These are steady state costs/savings, and it would take a considerable amount of time for the LAA to recover these additional capital contributions since in almost all cases they come from equity in a property, and the contribution would usually be paid upon the property being sold. Additionally, the savings estimates from the capital passporting changes are very uncertain because we do not know how much of the debt would be recovered amongst this cohort of the population.

Individuals who see a beneficial or detrimental outcome from Option 1 under Baseline 1

81. Individuals could see a beneficial or detrimental impact to their eligibility (compared to their baseline eligibility), and this can vary by amount too. For example, somebody who was ineligible for legal aid in the Crown Court previously but would receive non-contributory legal aid under Option 1 would make a considerable saving to their private legal costs compared to if they paid for legal services privately, whereas somebody who would have previously paid a small amount of contributions may only make a small saving if they become eligible for non-contributory legal aid in the future. This would not be the case in the magistrates' court, where there is no contributory element.
82. For the purposes of the analysis in the Crown Court, we have defined those who benefit or see a detrimental impact based on whether their eligibility outcome has changed between receiving non-contributory, contributory or no legal aid. This means that somebody is said:
- to have benefitted if they previously were not eligible for legal aid, but under option 1 are entitled to non-contributory or contributory legal aid
 - to have benefitted if they were previously entitled to contributory legal aid but under option 1 are entitled to non-contributory legal aid
 - to have a detrimental outcome if they previously were eligible for non-contributory legal aid but under option 1 are entitled to contributory or no legal aid
83. We do not include the individuals who continue to pay contributions towards their legal aid but see a change to their contribution amount, although these cases are captured in the overall cost projections. This is to ensure that we only look at individuals who have a significant change to their outcome.
84. Using the 2017/18¹ Family Resource Survey and DWP Policy Simulation Models, we can estimate the impacts of Option 1 at a population level and at a legal aid volume level. A more detailed level of analysis is required to calculate the legal aid impacts, and therefore these are more uncertain than the overall population estimates.
85. We can also use this modelling to analyse the equalities impacts, found in Annexes B and C and in the accompanying Equalities Assessment. The equalities analysis does not capture all those who benefit from Option 1 because we are unable to assess accurately some of the more minor changes to the means test. In addition, the beneficial and detrimental outcome analysis only explores the core changes to the magistrates' and Crown Court tests and does not capture some of the bespoke changes. This is explained in more detail in Annex B.
86. Tables 8 & 9 show that Option 1 would result in a significant number of people with a beneficial outcome rather than detrimental, relative to the legacy baseline. For the magistrates' means test, 11% of the population would benefit, and for the Crown Court test

¹ We recognise that the data is based on the population from a number of years ago (2017/18). This is because DWP need a significant amount of time to recalibrate the survey data to actual benefit income and to implement their forecasts on future policy (such as Universal Credit). We then use this data to feed into our models which are highly complex and takes time to analyse, we are therefore operating on a lag with respect to the time period of the data underpinning the analysis. However the financial data in the models are updated to the price year 22/23 and we do not think the annual population changes would be significant (although COVID-19 impacts on households might be considerable – but we wouldn't be able to use reliable up to date data on this at this point).

26% of the population would have a beneficial outcome. This Crown Court figure would be higher if we considered those who saw a reduction in the amount of their monthly contribution. The tables show that <1% of the population would lose out from the magistrates' policy and 2% in the Crown Court. These individuals can be negatively impacted because of one of two reasons

87. In the legal aid means test at the magistrates' court, there is a difference in the equivalisation metric (measure that takes account of the differences in a household's size and composition) which sees the weighted income of a small minority of individuals change. The individuals' weighted income was previously near but just under the thresholds (therefore making them eligible) but under option 1 it would be calculated to be just over the new thresholds, making them ineligible.

88. In the Crown Court, the majority of those who see a detrimental impact do so because of the capital passporting changes, which would result in some income passported individuals having to pay a capital contribution because of the equity they have in their property, if they are convicted. Since they would go from a position of being non-contributory to potentially paying a contribution, they are defined as suffering a detrimental impact.

Table 8: Number of adults in the population whose eligibility would change in the magistrates' court

	Benefit	Detriment
Population	5,000,000	100,000
%	11%	0%

Table 9: Number of adults in the population whose eligibility would change in the Crown Court

	Benefit	Detriment
Population	11,800,000	900,000
%	26%	2%

89. Tables 10 & 11 show the change in case volumes as a result from the Option 1 changes and whether those individuals have benefitted or faced a detrimental impact.

Table 10: Number of additional magistrates' court cases from those who have a change in eligibility

	Benefit	Detriment
Case Volume Change	17,000	100

Table 11: Number of additional Crown Court cases from those who have a change in eligibility

	Benefit	Detriment
Case Volume Change	200	-

90. Table 12 shows the number of individuals who would see their eligibility change under option 1 using estimated case volumes. Table 12 shows 3,000 benefitting from the changes in the Crown Court test and around 2,000 being detrimentally impacted. Those who are negatively impacted are likely those who would be expected to contribute after the capital test changes.

91. For the impact analysis in Annex B, where volume breakdowns are provided, the volumes being referenced are the volumes of individuals who would see their eligibility change under option and not the change in overall volumes.

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

	Benefit	Detriment
Estimated Volume	3,000	2,000

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

ii) Baseline 2

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

Costs of Option 1

Legal Aid Clients

94. A small number of legal aid clients would bear a cost as a result of Option 1. The costs would arise where a client's eligibility status changes from being eligible to ineligible, or where they move from non-contributory to contributory legal aid. Our estimates suggest that a negligible number of legal aid clients in the magistrates' court and around 3,000 clients in the Crown Court would see such a change. At steady state, this would result in an increased cost to clients of around £7m-£11m, although savings from this reduction would not be realised for many years because the main effect would be on convicted clients with property assets, where a charge could be placed on the property and redeemed when it is sold.

Criminal Legal Aid Providers

95. As covered in the analysis against Baseline 1, there would be administrative costs to providers. These would be less against a UC passporting baseline because the additional

volumes would be lower. It is expected that there would be an additional administrative cost of around £1m.

96. Criminal legal aid providers who currently undertake private work, along with providers who exclusively undertake private work, may lose out from the proposals if their clients now take up legal aid instead such that either i) clients decide to use an alternative provider who offers legal aid, or ii) clients who would previously have paid privately would be entitled to legal aid under Option 1, reducing the fee available to the provider.

The LAA

97. Under Option 1, the net cost to the Legal Aid fund is expected to be -£2m to £4m per annum, once in steady state. There would also be additional LAA administration costs as a result of this option, estimated to be £0.3m per year. The LAA would need to process an increased level of claims, anticipated to rise by 11,000 in the magistrates' court per year, and 100-300 Crown Court cases. There would be one-off costs to the LAA of around £2m to cover the IT changes required for the new means testing arrangements, but this included changes to the civil means test too which is difficult to disaggregate.

Benefits of Option 1

Legal Aid Clients

98. A considerable number of people would benefit as a result of the Option 1 proposals for magistrates' and Crown Court assessment changes (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance areas). This is because the impacts of the proposed policy would result in them having an improved outcome from the means test, e.g. their eligibility status may change from ineligible to eligible.
99. The extent to which people will benefit can vary widely, some people may have previously been ineligible for legal aid altogether and under Option 1 be eligible for contributory or non-contributory legal aid, whereas some people may only benefit from making a small saving on the contributions they make.
100. Looking at those who would move from being ineligible to eligible, we estimate that around 9,000 to 13,000 people would benefit annually in the magistrates' court and 100 to 300 people in the Crown Court. Those that benefit overall (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance), would receive estimated additional legal aid services to the value of £7m-£11m.
101. In addition to the 100 to 300 benefitting in the Crown Court by becoming newly eligible, between 6,000 and 9,000 contributory legal aid clients would see their contributions decrease (there are no contributions in the magistrates' court). This would save clients £1m-£3m in income contributions.

Criminal Legal Aid Providers

102. As a result of Option 1, criminal legal aid providers would have additional funded work through the increase in volumes of magistrates' and Crown Court cases (including Advocacy Assistance, Sentences & Appeals and Advice & Assistance). Criminal legal aid providers are estimated to receive £7m-£11m in additional funded work.

Net Impact

103. The legal aid fund would see a steady state net cost of -£2m to £4m, which is made up of the £7m-£11m funding for providers for the additional legal aid volumes plus the £1m-£3m cost from reductions to contributions, less the £7m-£11m additional income from capital contributions at steady state. Table 13 below shows more details of the steady state cost impacts to the Legal Aid fund for Option 1.

104. Legal aid clients would see a corresponding net benefit of £1m-£3m, from the increase of £7m-£11m additional legal services available, plus £1m-£3m saving from reduced contributions for some clients, less the steady state cost to clients of £7m-£11m from capital contributions.

105. Overall, criminal legal aid providers would see a small increase in administrative costs but would benefit from £7m-£11m of additional funded work.

106. Table 13 shows the estimated legal aid fund spend at steady state, split by the areas of criminal legal aid that Option 1 covers. There would be additional administration costs for the LAA as a result of this option, estimated to be £0.3m per annum.

Table 13: Annual steady state additional spending by type of criminal legal aid £m

Type of Criminal Legal Aid	Cost Range
Crown Court	-£7m to -£4m
Magistrates'	£4m to £6m
Advice and Assistance	£0.3m to £0.5m
Advocacy Assistance	£0.3m to £0.5m
Sentences and Appeals	£0.8m to £1.2m
Total*	-£2m to £4m

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

107. When comparing to a baseline where UC is fully rolled out and all recipients are passported, the proposals for option 1 would result in a net saving of around £4m - £7m in the Crown Court with the savings from the change to the post-conviction capital assessment exceeding the cost of the income test changes. The magistrates' assessment is estimated to cost around £4m-£6m at steady state due to the uplifting of the income test thresholds. Costs to other areas of criminal legal aid are estimated to total at around £2m.

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

Baseline 2: Further Analysis

Analytical Scope

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

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

Population Eligibility

111. We can estimate the adult population's entitlement to legal aid under the existing means test, assuming that UC is already fully rolled out and everybody in receipt of UC is passported. Under this scenario, more people would be passported through the means test who may have previously been entitled to contributory or no legal aid. Please note, we are not able to understand the populations impacts for the policies, as mentioned previously, where we have limited data (these can be found in more detail in Annex C).

112. The tables below estimate the breakdown of eligibility for the magistrates' court and Crown Court legal aid, where an additional split is applied in the Crown Court to show how many clients may be required to pay a capital contribution (i.e. having over £30k of disposable capital) if they were found guilty.

113. In the tables, an eligibility outcome of 'eligible' means an applicant would be eligible for non-contributory legal aid, compared to a 'contributory' outcome which means an applicant would be eligible for contributory legal aid.

Table 14: The adult population eligibility in the magistrates' court, under a UCAll baseline

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

Table 15: The adult population eligibility in the Crown Court, under a UCAll baseline

	Capital Result		
Income Result	Non-contributory	Contributory	Total

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Eligible	26%	7%	33%
Contributory	19%	28%	47%
Ineligible	20%	0%	20%
Total	66%	34%	100%

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

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

Table 16: The adult population eligibility to the magistrates' court test under the Option 1 means test

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

Table 17: The adult population eligibility to the Crown Court test under the Option 1 means test

	Capital Result		
Income Result	Non-Contributory	Contributory	Total
Eligible	25%	11%	37%
Contributory	19%	45%	63%
Ineligible	0%	0%	0%
Total	44%	56%	100%

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

116. Tables 18 & 19 show the adult population's change in eligibility in the magistrates' and Crown Court compared to the UCAII baseline. For the magistrates' means test, 8% of the population would benefit, and for the Crown Court test, 23% of the population would stand to have a beneficial outcome, although this would be higher if we looked at those who have reduced contributions. The tables show that <1% of the population would lose out from the magistrates' policy.

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

Table 18: Number of adults in the population level whose eligibility has changed in the magistrates' court

	Benefit	Detriment
Population	3,300,000	100,000
%	7%	0%

Table 19: Number of adults in the population level whose eligibility has changed in the Crown Court

	Benefit	Detriment
Population	10,600,000	1,700,000
%	23%	4%

118. Tables 20 & 21 show the change in case volumes as a result of the Option 1 changes and whether those individuals would have benefitted or not.

Table 20: Change in magistrates' court volumes for those who have a change in eligibility

	Benefit	Detriment
Case Volume Change	11,000	-100

Table 21: Number of additional Crown Court volumes from those who have a change in eligibility

	Benefit	Detriment
Case Volume Change	200	-

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

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

Table 22: Number of individuals who see their eligibility change under Option 1 in the Crown Court

	Benefit	Detriment
Estimate Volume	2,000	3,000

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

Assumptions, Risks and Sensitivity Analysis

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

	Assumption	Risk
Take-up rates	<p>The probability of an individual previously ineligible for legal aid who becomes eligible for legal aid as a result of the Option 1 proposals is estimated by identifying similar individuals in the population who are currently eligible and replicating their take-up rate. This is done by identifying individuals of the same age and sex, but who have the highest disposable income levels in the currently eligible population.</p> <p>Our data suggests that across civil and criminal legal aid, the age, sex and income of individuals are important characteristics to estimate how likely people are to take up legal aid.</p> <p>Case study:</p> <p>Consider an individual who is male, 30-40, and was previously ineligible for legal aid through the income test but under option 1 would be</p>	<p>There are risks that changing the means test rules would have behavioural impacts that are not captured in the analysis.</p>

	<p>entitled to legal aid. To consider how likely this individual would be to require magistrates' court legal aid, we would look at the individuals who are male, 30-40 and are currently eligible for legal aid. Using the existing legal aid data and the population data we can then estimate the rate at which these individuals are likely to require (and take up) legally aided magistrates' representation</p>	
	<p>Take up rate adjustments are applied if somebody moves from contributory legal aid to non-contributory, or vice-versa. This is to try and capture the behavioural impacts of the disincentive of being required to pay a contribution.</p> <p>Adults in the household are grouped by their age, sex, income, and capital eligibility status. This information is then used to match households to take up rates from real legal aid data (as has been detailed already). The following adjustment is then made:</p> <p>Any individual who is ineligible for legal aid under the old/base world and has moved to eligibility for legal aid under the new Means Test scenario, is matched to a TUR of those who were Contributory – Band C in real Legal Aid data.</p>	<p>There are risks that changing the means test may have behavioural impacts that are not captured in the analysis. For example, the proposed means test makes a more accurate assessment of people's ability to pay towards their contributions, and this may incentivise more people who are eligible to contributory legal aid to take it up</p>
<p>Case costs and duration</p>	<p>The models are disaggregated to magistrates' court cases and high, medium and low cost cases in the Crown Court. For each of these, the models use average cost and duration assumptions, which are critical for estimating contribution impacts. In reality these costs and durations follow particular distributional trends.</p>	<p>There is a risk that the case costs and durations do not capture the nuances as the modelling does not have the capability of applying the impacts of distributional trends of case costs and durations.</p>
<p>Data limitations</p>	<p>The model baseline is fixed to LAA volume forecasts from 18/19. This was applied to try and strip out the impacts of passporting everybody on Universal Credit, but also the impacts of more recent COVID-19 caseload impacts.</p>	<p>Our data on the financial circumstances of households in the population was based on survey data derived before Covid-19. The impacts of Covid-19 on the economy have added great uncertainty on the future circumstances for households in the population, and there is a risk that our data could no longer reflect reality.</p>

<p>Family Resource Survey</p>	<p>The Family Resources Survey (FRS) is a continuous household survey which collects information on a representative sample of private households in the United Kingdom. It is therefore assumed that the sampling is representative of the England and Wales population.</p>	<p>We recognise that the data is based on the population from a number of years ago (2017/18). This is because DWP need a significant amount of time to recalibrate the survey data to actual benefit income and to implement their forecasts on future policy (such as Universal Credit). We then use this data to feed into our models which are highly complex and takes time to analyse, we are therefore operating on a lag with respect to the time period of the data underpinning the analysis. However the financial data in the models are uprated to the price year 22/23 and we do not think the annual population changes would be significant (although COVID-19 impacts on households might be considerable – but we wouldn't be able to use reliable up to date data on this at this point).</p>
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Sensitivity Analysis

123. We have identified above that one of the key assumptions of the modelling is how we estimate how many of those who are currently ineligible for legal aid would take it up if they become eligible. Our sensitivity analysis revolves around the uncertainty of this assumption.

124. To illustrate how this assumption may affect the impacts of the outputs of the model, we have chosen to estimate the cost impacts under the assumption that our current estimate has a margin error of 20%. Therefore, in the first sensitivity analysis scenario we have uprated the take up rates for those that become newly eligible for legal aid under Option 1, by 20%, and for the second scenario we have downrated the same cohort's take up rate by 20%. It should be noted that this will not affect off-model estimates, as covered in Annex B.

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

Scenario	Total cost
Scenario 1 - 20% uprate	+ £2m
Scenario 2 - 20% downrate	- £2m

125. Table 23 shows that there would be a £2m swing in the estimated cost when the take up rate gets adjusted by +/- 20%. This range should not be used as a potential upper and lower bound of the impacts because there are many other assumptions that would need to be

considered, let alone the uncertainties around with the off-model analytical methodology/assumptions too.

Wider impacts

Equalities

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

Regulatory Impacts

127. There are no wider impacts on regulation.

International Trade Impacts

128. There would be no impacts of international trade as a result of our Option 1.

Monitoring and Evaluation

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

130. We are proposing to regularly review the income and capital thresholds for legal aid, with the first review within 3-5 years of the new means test coming into operation. That is, the first review would be published no earlier than 3 years and no later than 5 years after the new means test comes into operation.

131. This is a consultation IA so we will review Option 1 on the basis of responses received.

Annex A: Estimating Administrative Impact on Legal Providers

132. As explained in paragraphs 56 & 57, under Option 1 there would be additional administrative costs to providers due to a) the need to process additional number of means test applications, and b) the additional complexity of applications due to the need to require further evidential requirements or the change in the nature of applications (i.e. passported vs non-passported).

133. In particular, some additional deductions are being proposed for the full means test which may require extra work for providers, such as calculating the appropriate deductions for pension contributions, student loans and priority debts etc. This would affect those applications that require a full disposable income assessment. In addition, under Option 1, an increased number of people would need to be assessed on their capital in the Crown Court if convicted, because of the proposed changes to the capital passporting policy.

134. We provide an illustration below concerning how much Option 1 may cost providers from an administrative perspective, but the assumptions are based on very limited data. As part of the consultation we are requesting feedback from civil and criminal legal aid providers on the calculations and assumptions, such that we can better understand the true impacts.

Assumptions used:

(1) Time taken for applications

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

(2) Administrative cost per hour

Hourly cost of admin staff = £28.68*

*derived from the Annual Survey of Hours and Earnings 2021, median earnings of employees in a professional occupation, and applying a 30% uplift for overheads.

(3) Volume impacts:

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

135. The impacts on advocacy assistance and advice and assistance have not been accounted for due to the assumption that the volume impact would be low.

136. Based on the assumptions and volume impacts above, we can derive a calculation which estimates the provider costs across England and Wales may amount to around £1.3m per year. The calculations can be illustrated in the table below:

Calculations:

	Magistrates'	Crown
Change of means-testing time (mins)	1,100,000	15,000
increase in complexity of means-tested applications	900,000	800,000
Time impact (mins)	2,000,000	815,000
Time impacts (hours)	33,000	14,000
Cost impact (£)	£900,000	£400,000

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

Annex B: Supplementary Impact Analysis against Baseline 1

138. In accordance with our duties under section 149 of the Equalities Act 2010, an Equalities Assessment has been produced alongside this IA. The following analysis summarises the impact of Option 1 against on the financial eligibility of various protected characteristics. For more details see the accompanying Equalities Assessment.

139. The equalities analysis in this impact assessment captures the changes to the core magistrates' and Crown Court means tests. This includes nearly all the changes to the income, capital, contributions and passporting rules.

140. It does not capture the bespoke changes to advocacy assistance law, advice and assistance, sentencing and appeals means tests, which is covered in the Means Test Review Equalities Assessment.

141. It is not possible to estimate the equalities impacts of some components to the means test. These are explained in more detail below:

- **Priority Debt:** The Family Resources Survey (the basis for our modelling) does not have data on adults who hold priority debts. This means we cannot identify which types of individuals hold priority debts.
- **Disregards for compensation, ex-gratia, damages payments and backdated benefits and backdated child maintenance:** Similarly, we cannot identify the circumstances of the individuals who would have some of their income or capital disregarded because of the new changes to scope for what is disregarded. In addition, some provisions include a future-proofing element in relation to potential new schemes making payments in relation to personal harm. Therefore, we cannot estimate the scope or size of any such payments.

Impact on groups with protected characteristics

142. The tables below use the proportion of the England and Wales population who would see their eligibility change. These are followed by tables concerning the volumes of individuals who would see their eligibility change.

143. Tables 24 and 26 show the impacts for ethnicity at a population level. In the magistrates' Court, at least 11% of ethnic minority individuals are estimated to benefit, compared to only 10% of white individuals who are expected to benefit. In the Crown Court, only at least 19% of ethnic minority individuals are set to benefit compared to 26% of white individuals.

Table 24: Proportion of eligibility impacts by ethnicity in the magistrates' court, in the E&W population

Ethnicity	Benefit	Detriment
White	10%	0%
Mixed	11%	0%

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Asian	12%	0%
Black/African	18%	0%
Other	19%	0%

Table 25: Eligibility impacts by ethnicity for volumes of individuals with changed eligibility

Ethnicity	Benefit	Detriment
White	13,900	100
Mixed	200	-
Asian	1300	-
Black/African	900	-
Other	500	-

Table 26: Proportion of eligibility impacts by ethnicity in the Crown Court, in the E&W population

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

Table 27: Eligibility impacts by ethnicity for volumes of individuals with changed eligibility

Ethnicity	Benefit	Detriment
White	2600	1400
Mixed	-	100
Asian	200	400
Black/African	300	-
Other	100	-

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

Table 28: Proportion of eligibility impacts by sex in the magistrates' court, in the E&W population

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

Table 29: Eligibility impacts by sex for volumes of individuals with changed eligibility

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

Table 30: Proportion of eligibility impacts by sex in the Crown Court, in the E&W population

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

Table 31: Eligibility impacts by sex for volumes of individuals with changed eligibility

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

145. Similarly, we can look at the population impacts for those who are and are not disabled, using data derived from the Family Resources Survey recording of disability (The Equality Act 2010 defines a person as having a disability if they have a physical or mental impairment that has 'substantial' and 'long term' negative effects on their ability to do normal daily activities.)

146. Tables 32 and 34 shows that for Option 1, 9% and 15% of those who have a disability are estimated to benefit from our proposals for the magistrates' court and Crown Court respectively. The proportion is similar for non-disabled people in the magistrates' court, but in the Crown Court a significantly larger proportion of non-disabled people would be likely to benefit from the proposals.

Table 32: Proportion of eligibility impacts by disability status in the magistrates' court, in the E&W population

Disabled?	Benefit	Detriment
Yes	9%	0%
No	11%	0%

Table 33: Eligibility impacts by disability status for volumes of individuals with changed eligibility

Disabled?	Benefit	Detriment
Yes	2,400	-
No	14,600	-

Table 34: Proportion of eligibility impacts by disability status in the Crown Court, in the E&W population

Disabled?	Benefit	Detriment
Yes	15%	4%
No	30%	1%

Table 35: Eligibility impacts by disability status for volumes of individuals with changed eligibility

Disabled?	Benefit	Detriment
Yes	500	1,200
No	2,800	

147. Looking at the age bands in the population, Option 1 is more likely to benefit adults who are aged 31-40 (16%); the changes to the magistrates' court test will also benefit those who are younger (15%). This proportion then tapers with age until the oldest group, the 60 and overs, of whom only 6% would benefit. This tapering is likely to be driven by the proportion of each cohort that has below the median level of income, since older workers are more likely to be at their peak earnings than younger workers. For the Crown Court test, 31-59 years old benefit the most, and the older age groups are more likely to lose out. This is likely to be

driven by a larger proportion of people who would be passported but own their own property (with over £30k equity).

148. As with the population percentages, most of the individuals who would benefit at the magistrates' court are aged 18-50. In the Crown Court, the age cohort with the most individuals estimated to benefit are those aged 18-30 (1,300 projected to benefit per year), since the typical need for Crown Court legal aid is higher amongst younger people, and this tapers off as the age cohort increases. Those most likely to suffer a negative outcome are aged 41-50, presumably because this cohort are more likely to own a property and therefore be affected by the reversal of capital passporting for those income passported.

Table 36: Proportion of eligibility impacts by age in the magistrates' court, in the E&W population

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

Table 37: Eligibility impacts by age for magistrates' court cases with changed eligibility

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

Table 38: Proportion of eligibility impacts by age in the Crown Court, in the E&W population

Age Band	Benefit	Detriment
18-30	18%	0%
31-40	34%	0%
41-50	32%	1%

51-59	33%	2%
60+	19%	4%

Table 39: Eligibility impacts by age for Crown Court cases with changed eligibility

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

Impact by Family Type

149. Option 1 includes a number of proposals which would affect families in different ways, most notably the substantial increase to the cost of living allowance which takes into account additional partners and dependents within the family. Below we assess the aggregated impact of Option 1 at a population level and at a legal aid volume level.

150. Table 40 shows that the type of family that would benefit (at a population level) the most from the magistrates' proposals are those that have children. Of all families with children, at least 17% would benefit from the Option 1 proposals (17% of couples with children and 30% of lone parents would benefit at the magistrates' Court). The make-up of those benefitting in the Crown Court would be significantly different because these include very higher earners who were previously ineligible. Those with very high earnings who would benefit in this way are more likely to be in a couple, as 36% of couples with children and 39% of couples without children would benefit.

Table 40: Proportion of households that change eligibility by family type in the E&W population, for Option 1 in the magistrates' court Test

Family Type	Benefit	Detriment
Couple with children	17%	0%
Couple without children	6%	0%
Lone parent	30%	0%
Single adult without children	12%	0%
Female pensioner single	9%	0%

Male pensioner single	10%	0%
Pensioner couple	4%	1%

Table 41: Proportion of households that change eligibility by family type in the E&W population, for Option 1 in the Crown Court Test

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

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

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

Table 42: Magistrates' court volumes for those who changed eligibility outcome by family type

Family Type	Benefit	Detriment
Couple with children	7,700	-
Couple without children	2,200	-
Lone parent	1,000	-
Single adult without children	5,700	-
Female pensioner single	-	-

Male pensioner single	100	-
Pensioner couple	200	100

Table 43: Crown Court volumes for those who changed eligibility outcome by family type

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

Impact by Housing Tenure

153. There would be a significant change to the Crown Court means test as proposed in Option 1, that would directly change the way in which housing circumstances of applicants are considered. This is the proposal that homeowners in receipt of passported benefits would no longer be passported through the capital test and may have to contribute financially to the cost of their case, if they are convicted.

154. Tables 44 & 45 show that the housing tenures that would benefit the most from the proposed policy changes are different for the magistrates' and Crown Court tests. For the magistrates' test, renters would benefit the most (>15%), whereas for the Crown Court test, homeowners would benefit the most (>19%). However, homeowners would also be more likely to be detrimentally impacted in the Crown Court, due to the change in capital passporting rules.

Table 44: Proportion of households that change eligibility by Housing Tenure in the E&W population, for Option 1 in the magistrates' court

Tenure	Benefit	Detriment
Rented from Council	17%	0%
Rented from Housing Association	18%	0%
Rented privately unfurnished	20%	0%
Rented privately furnished	15%	0%

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Owned outright	4%	0%
Owned with mortgage	10%	0%

Table 45: Proportion of households that change eligibility by Housing Tenure in the E&W population, for Option 1 in the Crown Court

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

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

Table 46: Magistrates' court volumes for those who changed eligibility outcome by tenure type

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

Table 47: Crown Court volumes for those who changed eligibility outcome by tenure type

Tenure	Benefit	Detriment
Rented from Council	600	-

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

Impact by Household Income

156. Tables 48 and 49 below show how individuals would benefit depending on their household income grouping. Those who have household annual income greater than £10k would be the most likely in the population to benefit from Option 1. Conversely, those with an income below £10k would be very likely to already be eligible for non-contributory legal aid, and therefore have little scope to benefit. For the magistrates' test, as the income bands go up in value from £5k-£10k, the likelihood that the population would benefit tapers off, up to the highest banding (£50k+) where only 3% are expected to benefit.

157. A considerable number of high-income households would benefit from the removal of the £37,500 upper disposable income threshold in the Crown Court, at a population (in table 49, 63% of those that benefit have household income of above £50k). Nevertheless, such individuals typically have a very low need for Crown Court legal aid (approximately only 200 people per year are currently deemed ineligible through the current Crown Court means test by having disposable income above £37,500). This can be seen in table 51 below, which shows the low volume of defendants with an income above £50k who would benefit.

Table 48: Population eligibility impacts by household income in the magistrates' court, in the E&W population

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

Table 49: Population eligibility impacts by household income in the Crown Court, in the E&W population

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

158. Tables 50 and 51 show the legal aid volume change impacts by household income band.

Those in the middle-income ranges (£10k-£40k) would benefit the most from the proposed magistrates' and Crown Court means tests. In the Crown Court, individuals who would face a detrimental impact would be very likely to be those with incomes between £10k and £30k.

This is due to the benefit recipients who would now be required to pay capital contributions.

Table 50: Magistrates' court volumes for those who changed eligibility outcome by household income

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

Table 51: Crown Court volumes for those who changed eligibility outcome by household income

Income Band	Benefit	Detriment
0-5k	-	-
5k-10k	-	200

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10k-20k	800	1,100
20k-30k	1,000	700
30k-40k	900	100
40k-50k	300	-
50k+	300	-

Annex C: Supplementary Impact Analysis against Baseline 2

159. In accordance with our duties under section 149 of the Equalities Act 2010, an Equalities Assessment has been produced alongside this IA. The following analysis summarises the impact of Option 1 against on the financial eligibility of various protected characteristics. For more details see the accompanying Equalities Assessment.

160. The equalities analysis in this impact assessment captures the changes to the core magistrates' and Crown Court means tests. This includes nearly all the changes to the income, capital, contributions and passporting rules.

161. It does not capture the bespoke changes to advocacy assistance law, advice and assistance, sentencing and appeals means tests, which is covered in the Means Test Review Equalities Assessment.

162. It is not possible to estimate the equalities impacts of some components to the means test. These are explained in more detail below:

- **Priority Debt:** The Family Resources Survey (the basis for our modelling) does not have data on adults who hold priority debts. This means we cannot identify which types of individuals hold priority debts.
- **Disregards for compensation, ex-gratia, damages payments and backdated benefits and backdated child maintenance:** Similarly, we cannot identify the circumstances of the individuals who would have some of their income or capital disregarded because of the new changes to scope for what is disregarded. In addition, some provisions include a future-proofing element in relation to potential new schemes making payments in relation to personal harm. Therefore, we cannot estimate the scope or size of any such payments.

Impact on groups with protected characteristics

163. The tables below use the proportion of the England and Wales population who would see their eligibility change. These are followed by tables concerning the volumes of individuals who would see their eligibility change.

164. Tables 52 and 54 show the impacts for ethnicity at a population level. In the magistrates' court, at least 13% of ethnic minority individuals are estimated to benefit, compared to 7% of white individuals who would be expected to benefit. In the Crown Court, compared to 11% of ethnic minority individuals would benefit compared to 24% of white individuals.

Table 52: Proportion of eligibility impacts by ethnicity in the magistrates' court

	Benefit	Detriment
White	7%	0%
Mixed	8%	0%

Asian	7%	0%
Black/African	6%	0%
Other	13%	0%

Table 53: Eligibility impacts by ethnicity for volumes of individuals with changed eligibility

	Benefit	Detriment
White	9400	100
Mixed	200	-
Asian	800	-
Black/African	200	-
Other	400	-

Table 54: Proportion of eligibility impacts by ethnicity in the Crown Court

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

Table 55: Eligibility impacts by ethnicity for volumes of individuals with changed eligibility

	Benefit	Detriment
White	1600	1800
Mixed	-	100
Asian	100	600
Black/African	100	100
Other	100	-

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

Table 56: Proportion of eligibility impacts by sex in the magistrates' court

	Benefit	Detriment
Male	8%	0%
Female	7%	0%

Table 57: Eligibility impacts by sex for volumes of individuals with changed eligibility

	Benefit	Detriment
Male	10,100	-
Female	1,300	-

Table 58: Proportion of eligibility impacts by sex in the Crown Court

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

Table 59: Eligibility impacts by sex for volumes of individuals with changed eligibility

	Benefit	Detriment
Male	1,700	2,200
Female	200	

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

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

Table 60: Proportion of eligibility impacts by disability status in the magistrates' court

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

Table 61: Eligibility impacts by disability status for volumes of individuals with changed eligibility

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

Table 62: Proportion of eligibility impacts by disability status in the Crown Court

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

Table 63: Eligibility impacts by disability status for volumes of individuals with changed eligibility

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

168. Option 1 for the magistrates' test would be more likely to benefit adults who are aged 18-30 (11%), at a population level. This proportion then tapers with age until the oldest group, the 60 and overs, of whom only 7% would benefit. This tapering is likely to be driven by the proportion of each cohort that has below the median level of income, since older workers are more likely to be at their peak earnings than younger workers. For the Crown Court test, 31-59 year olds would benefit the most. This is likely to be driven by a larger proportion of people who are passported but own their own property (with over £30k equity).

169. As with the population percentages, the largest group of individuals who would benefit from the magistrates' proposals are those aged between 18-30 (a total of 5,100 individuals). In the Crown Court, the age cohort with the most individuals estimated to benefit would be those aged 18-30 too (800) – since the typical need for Crown Court legal aid is higher amongst younger people, and this tapers off as the age cohort increases.

170. This is not the same findings for those with a negative outcome though, as the largest age cohort here are those who are 41-50 years old (1,000), presumably because this cohort are

more likely to own a property and therefore to be affected by the reversal of capital passporting for those who are income passported.

Table 64: Proportion of eligibility impacts by age in the magistrates' court

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

Table 65: Eligibility impacts by ethnicity for volumes of individuals with changed eligibility

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

Table 66: Proportion of eligibility impacts by age in the Crown Court

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

Table 67: Eligibility impacts by ethnicity for volumes of individuals with changed eligibility

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

Impact by Family Type

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

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

Table 68: Proportion of households that change eligibility by family type in the E&W population, for magistrates' court test option 1

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

Table 69: Proportion of households that change eligibility by family type in the E&W population, for Option 1 in the Crown Court Test

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

Table 70: Magistrates' court volumes for those who changed eligibility outcome, by family type

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

Table 71: Crown volumes for those who changed eligibility outcome, by family type

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

Pensioner couple	100	100
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Impact by Household Tenure

173. Tables 72 and 73 show that for the magistrates' test, renters would benefit the most (with each different cohort benefitting either 12% or 13%), whilst 4% of homeowners who own outright benefit and 8% of those who own with a mortgage benefit. For the Crown Court test, homeowners would be more likely to lose out. This is due to the Capital passporting changes for the Crown Court test.

174. Tables 74 and 75 show the impacts at a case level. Renters (aggregated) would be the largest group of individuals who would benefit in magistrates' test with 5,900 estimated to benefit, and additionally they are the largest group who would benefit in the Crown Court with 1,400 individuals. As would be expected, the largest groups suffering a detrimental impact would be those who own their property, with 1,600 who own their property outright and 1,100 who own their property with a mortgage affected by the capital passporting rules.

Table 72: Household impact by Housing Tenure in the magistrates' court

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

Table 73: Household impact by Housing Tenure in the Crown Court

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

Table 74: Magistrates' court volumes for those who changed eligibility outcome by housing tenure

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

Table 75: Crown Court volumes for those who changed eligibility outcome by housing tenure

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

Impact by Household Income

175. Tables 76 and 77 below shows how individuals benefit depending on their household income grouping in the population. Most notably, those who have household annual income greater than £10k would be the most likely in the population to benefit from Option 1. This is because those with the lowest annual income (<£10k) are already very likely to pass the magistrates' and Crown Court tests, meaning there is little room for them to benefit further.

176. For the magistrates' test, as the income bands go up in value from £10k-£20k, the likelihood that the population would benefit tapers off, up to the highest banding (£50k+) where only 2% are expected to benefit.

177. The Crown Court table shows those with household incomes between £5k and £20k would be the most likely to be negatively impacted, because this cohort are more likely to be on UC and therefore be affected by capital passporting changes. This is also reflected in the volumes table (Table 80), although those with income between £20k-£30k are also shown as having one of the largest detrimental impacts too.

Table 76: Population eligibility impacts by household income in the magistrates' court

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

Table 77: Population eligibility impacts by household income in the Crown Court

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

Table 79: Magistrates' court volumes for those who changed eligibility outcome by household income

	Benefit	Detriment
0-5k	-	-
5k-10k	-	-
10k-20k	3,600	-
20k-30k	3,500	-
30k-40k	2,200	-

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40k-50k	1,000	-
50k+	1,100	-

Table 80: Crown Court volumes for those who changed eligibility outcome by household income

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