

<b>Title: Making the offence in section 1 of the Malicious Communications Act 1988 a triable either-way offence</b>  <b>IA No:</b> MoJ019/2014  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 30/05/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> general.queries@justice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£m	£m	£m	Yes/No	In/Out/zero net cost

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

The current offence under section 1 of the Malicious Communications Act 1988 of sending certain articles with intent to cause distress or anxiety is a summary-only offence with a maximum penalty of six months imprisonment. Prosecutions for summary-only offences must be brought in the magistrates' court and within six months of the offence being committed. In some cases, the maximum penalty may be inadequate and more time might be required to obtain evidence. Government intervention is necessary to make this offence triable either way, thereby allowing for a higher maximum penalty and removing the time limit on prosecutions.

**What are the policy objectives and the intended effects?**

The overall policy objective is to enhance protection for those at risk of becoming victims of a section 1 offence, including vulnerable young people. . Making the offence under section 1 triable either way would allow more time for prosecutions to be brought and provide for a higher maximum penalty (of up to two years imprisonment). This should ensure that more offenders can be brought to justice and receive sentences which reflect the gravity of the offending behaviour in the most serious cases.

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

Option 0 - Do nothing. The offence under section 1 of the Malicious Communications Act 1988 would continue to be summary-only, with a maximum penalty of six months imprisonment.

Option 1 - make the offence under section 1 of the Malicious Communications Act 1988 a triable either-way offence, with a higher maximum penalty of two years imprisonment,

Our preferred option is option 1 as this would lift the time limit on prosecutions and provide for a higher penalty in appropriate cases, which should help to protect vulnerable young people.

<b>Will the policy be reviewed?</b> It will/will not be reviewed. <b>If applicable, set review date:</b> Month/Year						
Does implementation go beyond minimum EU requirements?			Yes / No / N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes/No	<b>&lt; 2.0</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No	<b>Large</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>	

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

Signed by the responsible  
SELECT SIGNATORY:


 Date: 18/06/2014

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

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

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

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

Making the offence triable either way has cost implications for Her Majesty's Courts and Tribunal Service (HMCTS), the Crown Prosecution Service (CPS) and the Legal Aid Agency (LAA), as some cases will now be tried in the Crown Court where the costs tend to be higher. Increasing the maximum penalty to two years' imprisonment also has cost implications for the National Offender Management Service (NOMS) as it is likely to increase the average custodial sentence length given for this offence and will therefore give rise to additional prison costs. Overall we estimate additional costs to the Criminal Justice System up to around £2m per annum (in 2013/14 prices).

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

There may be minimal one-off training and familiarisation costs to the police and the judiciary.

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

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

It has not been possible to monetise the benefits.

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

The key non-monetised benefit of the proposed changes to section 1 is better protection for those at risk of becoming victims of a section 1 offence, which includes the young and vulnerable. Making the offence under section 1 triable either way would allow more time for prosecutions to be brought and provide for a higher maximum penalty (of up to two years imprisonment). The increase to the maximum penalty may have a deterrent effect, although as the evidence on the scale of deterrence is weak this has not been quantified. This could in return protect the public.

### Key assumptions/sensitivities/risks

Discount rate (%)

We assume that the number of offenders proceeded against and those given a custodial sentence under section 1 of the MCA will remain broadly similar as in 2012. However, the numbers may change (up or down).. We use the proxy offence of publication of obscene materials to estimate the proportion of cases tried in each court and the new ACSL given. Data from 2005-2008 shows that on average 25% of cases were tried in the Crown Court and the ACSL given to offenders given immediate custody was approximately 6 months. There is a risk that more/less cases will be tried in the Crown Court and that the ACSL given will be longer/shorter.

A full outline of the assumptions/sensitivities can be found in the assumptions and risks section.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

# Evidence Base (for summary sheets)

## Introduction

1. Section 1 of the Malicious Communications Act 1988 (“the 1988 Act”) covers the sending to another of any letters, electronic communications or any other article which could include, for example, photographs and recordings that are indecent, grossly offensive or which convey a threat or information which the sender knows or believes to be false. It also covers the sending of such articles which are, in whole or part, of an indecent or grossly offensive nature., In each case there must be an intention on the part of the sender to cause distress or anxiety to the person who receives them or to any other person who the sender intends that it or its contents or nature should be communicated.
2. The offence refers to the sending, delivering or transmitting, there is no requirement for the communication to reach (or be seen by) the person who is intended to receive it.
3. The offence under section 1 of the 1988 Act is currently a summary offence. This means that prosecutions for this offence can only be dealt with in the Magistrates’ Court, and that a prosecution must be commenced within six months from the time when the offence is alleged to have been committed This offence is subject to the maximum penalty of six months imprisonment, a fine of £5,000 or both.

## Problem under consideration

4. Angie Bray MP made representations arising from a case in her constituency involving an adult male sending sexually explicit text messages to a 13 year old girl. A prosecution under section 15 of the Sexual Offences Act 2003 (which makes it an offence to groom a child and then meet them for the purposes of sexual activity) failed because there had been no such meeting. By then, it was too late to prosecute the man under the Malicious Communications Act 1988, as the six-month time limit within which to bring a prosecution had run out.
5. Representations were also been made to Criminal Justice Ministers that the six-month time limit on the offence under section 1 of the Malicious Communications Act 1988 hampers police investigations into internet related offences that might be charged under section 1, for example in the context of “trolling. Some cases may also justify a higher penalty than is possible for a summary offence. In light of these representations, the Government accepted an amendment tabled by Angie Bray at the Commons Committee Stage of the Criminal Justice and Courts Bill to amend section 1 of the Malicious Communications Act to address this problem. The Criminal Justice and Courts Bill was therefore amended to include this provision.

## Policy objective

6. The overall policy objective of amending section 1 of the Malicious Communications Act 1988 is to enhance protection for those at risk of becoming victims of a section 1 offence, which includes vulnerable young people. The proposed changes to section 1 would help do this by allowing more time for prosecutions to be brought and providing for a higher maximum penalty of up to two years’ imprisonment, or an unlimited fine, or both. The aim is to ensure that more time is available to bring offenders to justice and the penalty reflects the gravity of the offending behaviour in the most serious cases. The changes would

also allow more time for police investigations into other internet related offences that might be charged under section 1, for example in the context of “trolling, and when evidence has to be obtained from internet service providers based abroad.

### **Rationale for intervention**

7. The conventional economic approach to government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way the market operated (“market failures”) or if there are strong enough failures in existing intervention (“institutional failures”). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons.
8. In this case, the Government is intervening in response to the development of new offending behaviour to ensure that there is both more time for a prosecution to be brought, and that those offenders found guilty will be subject to a higher maximum penalty in the most serious cases. This should ensure that potential victims are better protected and to increase the chances of offenders being brought to justice, ensuring a more equitable outcome. As a result of the Government’s changes, section 1 might be used to prosecute adults who send (perhaps sexually explicit) texts or emails to children in an attempt to ‘groom’ them, but where it cannot be proved that the offence (of grooming) at section 15 of the Sexual Offences Act 2003 has been attempted

### **Proposed reforms**

9. The Criminal Justice and Courts Bill was amended at Commons Report stage to make the offence in section 1 of the Malicious Communications Act 1988 an ‘either way offence’, and increasing the maximum penalty to 2 years imprisonment, or an unlimited fine, or both. The offence in section 1 is currently summary only. This means that: prosecutions can only be brought in the magistrates’ courts; that the maximum penalty for the offence is currently a fine of up to £5,000, or a custodial sentence of up to six months (or both); and that prosecutions for the offence must be brought within six months from the time it was committed. Making the offence either way would remove the six-month time limit and provide for a higher maximum penalty.

### **Main affected groups**

10. The following groups would be affected by this policy:
  - Police
  - Crown Prosecution Service (CPS)
  - Her Majesty’s Courts and Tribunals (HMCTS)
  - National Offender Management Services (NOMS)
  - Legal Aid Agency (LAA)
  - Lawyers
  - Victims and potential victims

### **Costs and Benefits**

11. This Impact Assessment identifies both monetised and non-monetised impacts from society’s perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact

Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

### **Option 0 – Do nothing**

12. This option would maintain the status quo and equates to not changing the current offence. The section 1 offence would remain a summary offence subject to the six month time limit within which to bring prosecutions in the Magistrates' Courts. The maximum penalty available would remain as six months imprisonment, a £5,000 fine or both.
13. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

### **Option 1 – Make the offence under section 1 of the Malicious Communication Offence a triable either way offence, with a maximum penalty of 2 years imprisonment**

#### **Costs**

14. To estimate the additional costs to the Criminal Justice System (CJS)<sup>1</sup>, we compare the costs of making the offence triable either way and increasing the maximum penalty to 2 years' imprisonment to maintaining the current summary only offence with a 6 months maximum.
15. There will be two main impacts on the CJS. Firstly, there will be an impact as a result of making the offence triable either way. Currently, the offence is summary only and therefore triable only in a magistrates' court. Making the offence triable either way would lead some cases to be tried in the Crown Court.<sup>2</sup> This shift from the magistrates' courts to the Crown Court has cost implications for the CPS, HMCTS, and the LAA, as the costs of prosecuting, hearing and providing legal advice for defendants tried in the Crown Court tend to be higher.
16. In order to estimate the additional costs to the CPS, LAA and HMCTS, we assume that around 25% of cases will be tried in the Crown Court, This estimate is based on data from the proxy offence of prohibition of obscene matter<sup>3</sup> which shows that between 2005 and 2008 an average of approximately 25% of cases were tried in the Crown Court.<sup>4</sup> As the maximum penalty for the proxy offence was increased from three to five years in January 2009, we are unable to use a more recent time period. Although the proxy offence had a maximum penalty of three years until 2008, the Average Custodial Sentence Length (ACSL) was 6 months, which is substantially less than the maximum. We estimate that the main impact will arise from making the offence triable either way.
17. Secondly, there will be an impact in terms of increased custodial sentence lengths. We anticipate that increasing the maximum penalty from six months to

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<sup>1</sup> The CJS encompasses Her Majesty's Courts and Tribunal Services (HMCTS), the Crown Prosecution Service (CPS), the Legal Aid Agency (LAA) and National Offender Management Services (NOMs)

<sup>2</sup> Either because the offence is deemed serious enough to be sent for trial in the Crown Court, or because the defendant elects for trial by jury.

<sup>3</sup> An offence under the 1959 Obscene Publications Act (Section.2(1)) as amended by the 1964 Obscene Publications Act S.1(1) and Criminal Justice and Immigration Act 2008 S.71. The maximum custodial sentence is five years, although it was three years until January 2009.

<sup>4</sup> Further breakdown of MOJ Criminal Justice Statistics 2013

two years' will impose additional costs on the National Offender Management Service (NOMS) by increasing the average custodial sentence length (ACSL) given to some offenders.

18. Data shows that in the period 2005-2008 the ACSL of the proxy offence was 6 months. This compares with an ACSL of 2.1 months for the existing Malicious Communications offence.<sup>5</sup> We assume the ACSL for the proposed triable either way offence will be the same as for the proxy offence. We therefore estimate that the ACSL of the Malicious Communications offence will increase 3.9 months.
19. Data shows that in 2012, 772 defendants were proceeded against for the offence under section 1 of the 1988 Malicious Communications Act.<sup>6</sup> Of those proceeded against, 9% were sentenced to immediate custody. We use this data to calculate the total additional costs to the CJS, by assuming the volumes and proportions sentenced to immediate custody will not change.
20. Overall we estimate increased annual costs to the CJS of up to around £2million. This includes an approximate £1m in additional costs to NOMS per annum and £1million to the wider CJS (including the CPS, HMCTS and LAA).<sup>7</sup>
21. As this is an existing offence, we do not expect substantial additional costs to the police and the judiciary, although there may be some minimal one-off costs associated with training and familiarisation.

## Benefits

21. The changes to section 1 of the Malicious Communications Act being taken forward in the Criminal Justice Bill would help to enhance protection for those at risk of receiving certain articles with intent to cause anxiety or distress by allowing more time for prosecutions to be brought and providing for a higher penalty to reflect the gravity of offending behaviour in the most serious cases. As a result of the Government's changes, section 1 might be used to prosecute adults who send (perhaps sexually explicit) texts or emails to children in an attempt to 'groom' them, but where it cannot be proved that the offence at section 15 of the Sexual Offences Act 2003 has been attempted. This will help ensure that vulnerable young people are protected.

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<sup>5</sup> Further breakdown of MOJ Criminal Justice Statistics 2013

<sup>6</sup> Ibid

<sup>7</sup> All costs are rounded to the nearest 500,000

## Assumptions/Risks

• Assumption	• Risk
<p><b>Volume of cases:</b></p> <ul style="list-style-type: none"> <li>We use data on the number of proceedings under section 1 of the Malicious Communications Act 1988 from 2012 to estimate the total costs.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013.</p> <ul style="list-style-type: none"> <li>We assume that the number of proceedings will remain the same.</li> </ul> <p>Source: MoJ internal analysis, 2014.</p>	<ul style="list-style-type: none"> <li>There is a risk that the number of proceedings for this offence will decrease or increase following the increase in the maximum penalty and that the total costs will increase over time.</li> <li>Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used</li> </ul>
<p><b>Proportion of offenders given immediate custody:</b></p> <ul style="list-style-type: none"> <li>We assume that the proportion of offenders sentenced to immediate custody under section 1 of the Malicious Communications Act will not change following the increase in the maximum penalty.</li> </ul> <p>Source: MoJ internal analysis, 2014.</p> <ul style="list-style-type: none"> <li>In 2012, 9% of defendants proceeded against were sentenced to immediate custody.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, MoJ, 2013.</p>	<ul style="list-style-type: none"> <li>There is a risk that more/fewer offenders will be sentenced to immediate custody.</li> </ul>
<p><b>The proportion of cases tried in the magistrates v the Crown Court:</b></p> <ul style="list-style-type: none"> <li>We use the proxy offence to estimate the proportion of cases tried in each court. The proxy offence used is publication of obscene materials (from the 1959 Obscene Publications Act (Section.2(1)) as amended by the 1964 Obscene Publications Act S.1(1) and Criminal Justice and Immigration Act 2008 S.71).</li> </ul>	

<p>Source: MoJ Internal Analysis, 2014</p> <ul style="list-style-type: none"> <li>Data shows that between 2005 and 2008 on average of 25% of cases were tried in the Crown Court.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice 2013</p> <ul style="list-style-type: none"> <li>We assume that the same proportion of cases will be tried in the Crown Court under the proposed triable either way offence.</li> </ul> <p>Source: MoJ Internal Analysis, 2014</p>	<ul style="list-style-type: none"> <li>There is a risk that more/fewer offenders may be tried in the magistrates' courts or the Crown Courts</li> </ul>
<p><b>The change in ACSL from an increase in maximum penalty:</b></p> <ul style="list-style-type: none"> <li>We use the proxy offence of publication of obscene materials to estimate the ACSL given under the proposed triable either way offence.</li> </ul> <p>Source: MoJ Internal Analysis , 2014</p> <ul style="list-style-type: none"> <li>Data shows that between 2005 and 2008 the ACSL given for the proxy offence was on average 6 months.</li> </ul> <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice 2014</p> <ul style="list-style-type: none"> <li>We assume the 'old' ACSL given for the malicious communications offence is represented by the ACSL from 2012. Data shows the ACSL in 2012 was approximately 2.1 months.</li> <li>We assume the ACSL under the triable either way offence will be the same as for the proxy offence. We therefore estimate the ACSL will increase by approximately 3.9 months.</li> </ul> <p>Source: MoJ Internal Analysis, based on a further breakdown of the Criminal Justice Statistics, MoJ 2013.</p>	<ul style="list-style-type: none"> <li>There is a risk that the ACSL given for the triable either way Malicious Communicates offence will be shorter/longer.</li> <li>There is a risk that the ACSL for the malicious communications offence would have changed over time and therefore the increase in the ACSL would be lower/higher.</li> </ul>
<ul style="list-style-type: none"> <li><b>Cost assumptions</b></li> </ul>	

<p><b>CPS costs, advocacy costs:</b></p> <ul style="list-style-type: none"> <li>The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks). The range of costs reflects the different ABC and advocacy costs for guilty plea and effective trials, as well as the assumption that half of the cases would be prosecuted in the Magistrates' and half in the Crown Courts.</li> </ul> <p>Source: CPS 2014; MoJ internal analysis, 2014.</p>	<p>The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): <a href="http://www.cps.gov.uk/publications/finance/abc_guide.pdf">http://www.cps.gov.uk/publications/finance/abc_guide.pdf</a>.</p>
<p><b>HMCTS costs (magistrates):</b></p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrate's court costs are £1,220 per sitting day in 2013/14 prices. A sitting day is assumed to be 5 hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and updated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>). HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> <li>The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits.</li> <li>Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.</li> <li>The timings are collection of data from February 2009. Any difference in these timings could influence costings.</li> <li>The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.</li> <li>Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court</li> </ul>

	<p>than no trials (trials where there was a guilty plea at the initial hearing).</p> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"><li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li></ul>
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<p><b>HMCTS costs (crown):</b></p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown court costs per sitting day. This was added to the cost of the initial hearing in the Magistrates, as all criminal cases start in the Magistrates courts. Crown Court cost is £1,640 per sitting day in 2013/14 prices, assuming a sitting day is 5 hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and updated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>).</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> <li>• The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.</li> <li>• Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</li> <li>• The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.</li> <li>• Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</li> </ul> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>
<p><b>Legal Aid costs:</b></p> <p>We assume an eligibility rate of 50% for cases in the magistrates' courts and 100% in the Crown Court.</p> <p>The average legal aid cost in the Magistrates is assumed to be around £500, and £5,000 in the Crown Court (based on Crime Lower Report and Crime Higher Report, Legal Aid Agency).</p> <p>We use an average cost including all offence types from the dataset that includes both standard and non-standard fees to estimate the cost to the Legal Aid Agency.</p>	<ul style="list-style-type: none"> <li>• Variance in the Legal Aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</li> <li>• Assuming 100% eligibility for Legal Aid in the Crown court carries several risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary. This could mean that the costings provided are an overestimate.</li> <li>• There is a risk that the cost could be higher where Legal Aid is paid under the more expensive non standard fee scheme.</li> </ul>
<p><b>Prison costs:</b></p>	<ul style="list-style-type: none"> <li>• The cost of additional prison places is also dependent on the existing</li> </ul>

<p>We assume that 50% of a prison sentence over 12 months is served on probation and that there is no element of licence for a sentence under 12 months. The cost per prison place is £29,000 in 2013/14 prices (NOMS management accounts addendum (2012/13)).</p>	<p>prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.</p>
<p><b>Probation costs:</b></p> <p>Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices. The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and updated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>).</p> <p>Source: MoJ internal analysis, 2013.</p>	<ul style="list-style-type: none"> <li>• Costs represent the national average fully apportioned cost based on delivery by 35 Probation Trusts in 2012/13.</li> <li>• Unit costs are calculated from the total fully apportioned cost of relevant services divided by starts in that year and do not consider which elements of cost are fixed and which will vary based on service volumes. Major changes to the volume, length or content of community sentences or the characteristics of the offender population could affect the unit cost. For example, there is a risk that costs could be higher than forecast should an offender be sentenced to less than 12 months in custody. This is because they would in future be subject to additional licence conditions and associated costs under the Offender Rehabilitation Act 2014.</li> <li>• The costs consist of costs for both (a) managing the sentence and (b) delivering court-ordered requirements. Excludes centrally managed contract costs for Electronic Monitoring and Sentence Order Attendance Centres.</li> </ul>

### Summary and preferred option with description of implementation plan

Our preferred option is option 1 – to make the offence in section 1 of the Malicious Communications Act 1988 an either-way offence. We believe that the change would be helpful in cases where more time is needed for investigations and where the circumstances of the case justify a higher penalty than the current maximum of six months' imprisonment.

Making the section 1 offence triable either way requires primary legislation. Amendments were tabled at Committee stage to the Criminal Justice and Courts Bill to this effect. Subject to these amendments being approved in both Houses of Parliament, the changes

would be implemented. The Government would review the changes within 3-5 years after implementation to ensure that they were meeting their objectives of better protecting the public.